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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DONNA CURLING, ET AL.,	:	
	:	
PLAINTIFFS,	:	
vs.	:	DOCKET NUMBER
	:	1:17-CV-2989-AT
BRAD RAFFENSPERGER, ET AL.,	:	
	:	
DEFENDANTS.	:	

TRANSCRIPT OF BENCH TRIAL - VOLUME 15 PROCEEDINGS

BEFORE THE HONORABLE AMY TOTENBERG

UNITED STATES DISTRICT SENIOR JUDGE

JANUARY 30, 2024

MECHANICAL STENOGRAPHY OF PROCEEDINGS AND COMPUTER-AIDED

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P R O C E E D I N G S

(Atlanta, Fulton County, Georgia; January 30, 2024.)

THE COURT: Morning, Counsel. Good morning, ladies and gentlemen.

Are we ready to proceed today?

MR. BELINFANTE: We are, Your Honor. We -- Mr. Cross and I talked, and we had one housekeeping measure we wanted to raise with you.

THE COURT: All right.

MR. CROSS: We were thinking, Your Honor, it looks like we may be done today with their case. We're still figuring out if there is a rebuttal case. If there is, it will be very, very short. That might mean we spill over tomorrow morning. Maybe it doesn't.

We thought, if it works for the Court, to just decide Thursday morning is closings, regardless of whether we finish today or tomorrow. Everyone just knows we've got it -- that is the schedule. And if we're done early, folks have tomorrow to kind of decompress and prepare. We'll do what works best for you.

THE COURT: And y'all agree on that?

MR. CROSS: Yes.

MR. BROWN: Yes, Your Honor.

MR. BELINFANTE: We're fine for the State.

THE COURT: Okay. That's fine. And how long did you

1 want to have closings?

2 MR. CROSS: We had talked about somewhere in the
3 neighborhood of 90 minutes to two hours per side. But we
4 obviously defer to what works best for Your Honor. There is a
5 lot of evidence, and we want to distill it for you.

6 MR. BELINFANTE: We're fine with that as well. I
7 think we can do ours in 90 minutes. But there's just one of
8 us, so ...

9 THE COURT: Well, that's true. So I think -- I can
10 understand why you need two hours. The question then is are
11 you wanting to go straight or do you want to -- I mean,
12 obviously everyone could eat lunch afterwards rather than
13 taking a lunch break. But I think we have to have some sort of
14 half hour break.

15 MR. CROSS: Yeah. I mean, obviously we go first,
16 then them. I assume some break in between that. And then
17 whatever time is left for us for rebuttal. But that would be
18 very brief.

19 THE COURT: Okay.

20 MR. BELINFANTE: And, Your Honor, I know, just from
21 prior experience in this court -- not your court, but in the
22 Northern District, I have broken up my closing to have a break.
23 I don't mind doing that since we're going second if we got a
24 later start or something of that nature. So we will do
25 whatever the Court prefers.

1 THE COURT: Yeah. We'll take breaks. I just don't
2 want to sort of have everyone disappear for 45 minutes. That's
3 all.

4 MR. BELINFANTE: Understood. Right.

5 MR. OLES: Judge, just to mention it now, we would
6 appreciate a reasonable period of time for closing for
7 Mr. Davis.

8 THE COURT: Right. I understand.

9 MR. OLES: Thank you.

10 THE COURT: What I would expect is that you should
11 discuss that with plaintiffs' other counsel when we get a break
12 today as early as you can so that you can sort of indicate what
13 you want, they can think about it, and then you can talk some
14 more. And if there is a problem, let me know.

15 MR. OLES: Thank you, Judge.

16 THE COURT: That's fine. Let me figure out what our
17 beginning time is on Thursday based on how things evolve and
18 how my health is going and my attention span.

19 MR. CROSS: Yes. We thought you might appreciate a
20 day off if we end up ...

21 THE COURT: All right.

22 MR. CROSS: If we do anything on Wednesday, it is
23 going to be short in the morning.

24 THE COURT: Okay. I'm just -- okay. That's fine.
25 We'll just play the beginning time by ear.

1 Okay. Anything else we need to address?

2 MR. BELINFANTE: Not for the State, Your Honor.

3 THE COURT: Y'all had anything outstanding that I
4 have forgotten?

5 All right. You may proceed.

6 **THE DEFENDANTS' CASE (Continued).**

7 MR. BELINFANTE: Your Honor, the State will call
8 Ms. Marilyn Marks for cross-examination.

9 COURTROOM DEPUTY CLERK: Please raise your right
10 hand.

11 **(Witness sworn)**

12 COURTROOM DEPUTY CLERK: Please have a seat.

13 Loudly and clearly state your name and spell your
14 complete name for the record.

15 THE WITNESS: Marilyn Marks, M-A-R-I-L-Y-N,
16 M-A-R-K-S.

17 Whereupon,

18 MARILYN MARKS,

19 after having been first duly sworn, testified as follows:

20 CROSS-EXAMINATION

21 BY MR. BELINFANTE:

22 **Q.** Good morning, Ms. Marks.

23 **A.** Good morning.

24 **Q.** As you know, I'm Josh Belinfante representing the State.

25 You are not a Georgia resident today; is that correct?

1 **A.** That's correct.

2 **Q.** All right. So you have never -- and you've never actually
3 voted on the Georgia election system, the Dominion BMD system;
4 is that right?

5 **A.** I have not voted in an election on it. I do vote on a BMD
6 in North Carolina.

7 **Q.** Okay. And at one point, you had a CPA, an active license;
8 is that right?

9 **A.** That's correct.

10 **Q.** Okay. But that license you allowed to lapse because you
11 weren't using it; is that right?

12 **A.** Correct. That was a very long time ago.

13 **Q.** Yes, ma'am.

14 And so I'll be asking you, as you probably figured, some
15 questions on audits.

16 Just to be clear, your auditing experience is for
17 financial audits and not election audits; is that right?

18 **A.** My professional auditing experience would have been when I
19 was a CPA and doing a lot of auditing. But I have not done
20 election auditing in terms of being a professional.

21 **Q.** Okay. And you have never actually worked for a government
22 election board or a Secretary of State's office; is that right?

23 **A.** I've actually been what is called an election judge in
24 Colorado.

25 **Q.** Okay. And what was the duties of the election judge?

1 **A.** In each county, there would be a county clerk. They were
2 charged with the duties that a superintendent of elections
3 would be charged with in Georgia. So it was an elected county
4 clerk. And they engaged the poll workers, the absentee ballot
5 workers.

6 And I volunteered for that job. And I was, you know,
7 employed as a temporary, if you will, doing that kind of work
8 and called an election judge.

9 **Q.** Okay. And when was that?

10 **A.** Oh, goodness.

11 **Q.** You can give me a decade is fine.

12 **A.** That is about what I'll have to do.

13 **Q.** Yeah. That's fine.

14 **A.** Probably 2008, 2009.

15 **Q.** Okay.

16 **A.** Maybe 2007, 2008.

17 **Q.** Sure. Okay.

18 But just to be clear, you have never served on a board of
19 elections in the State of Georgia; is that right?

20 **A.** Correct.

21 **Q.** And you have never worked for the Secretary of State's
22 office in Georgia?

23 **A.** Certainly not.

24 **Q.** Okay. But also to be very clear and fair, you're very
25 involved in election policy debates in Georgia; is that right?

1 **A.** That's correct.

2 **Q.** Okay. And as part of that, you keep up with news reports
3 on election matters in Georgia?

4 **A.** I try to. I'm not 100 percent current.

5 **Q.** No one can do that.

6 And you also follow elections in your role -- or let me
7 ask this first.

8 You're the executive director of the Coalition for Good
9 Governance?

10 **A.** That is correct.

11 **Q.** Okay. I will probably refer to that today as the
12 Coalition.

13 **A.** That's fine.

14 **Q.** Okay. And in your role as the executive director of the
15 Coalition, you also at least attempt to keep abreast of what is
16 going on across the country in election matters; is that right?

17 **A.** That's correct.

18 **Q.** Okay. And you have a particular interest in hand-marked
19 paper ballots and electronic voting machines; is that right?

20 **A.** I don't know that I would phrase it that way.

21 **Q.** Okay. How would you phrase it?

22 **A.** That CGG's work is focused more generally on election
23 security and verifiable elections.

24 **Q.** Okay. Don't worry. I'm not going to ask you the
25 difference between election security and cybersecurity.

1 **A.** I was all prepared for that.

2 **Q.** I'm not. So we're okay.

3 The Coalition is the party to this lawsuit, not you
4 individually; is that right?

5 **A.** That's correct.

6 **Q.** Okay. And how long have you been the executive director
7 of the Coalition?

8 **A.** I believe 2014.

9 **Q.** Okay. I'm not asking for any members' names. But do you
10 know if the Coalition has members in every county in Georgia?

11 **A.** I don't think we have members in every county, no.

12 **Q.** Okay. And the Coalition does have a mission statement,
13 does it not?

14 **A.** It does.

15 **Q.** Okay. Let me show you what we have marked as Defendants'
16 Trial Exhibit 176.

17 Is this a -- do you recognize this document?

18 **A.** I do.

19 **Q.** Okay. How do you recognize it?

20 **A.** This is probably on our out-of-date website.

21 **Q.** Okay. Is it a true and accurate copy of the Coalition's
22 mission statement?

23 **A.** It appears to be.

24 **Q.** All right.

25 MR. BELINFANTE: Your Honor, at this time I would

1 move to enter into evidence Defendants' Exhibit 176.

2 MR. BROWN: No objection.

3 THE COURT: That's admitted.

4 BY MR. BELINFANTE:

5 Q. In the last line there, it says that -- it describes part
6 of the mission is we will generally use available means of
7 education and communication to illuminate and shape policy
8 debates.

9 Do you see that?

10 A. Yes.

11 Q. Is that still accurate?

12 A. It is.

13 Q. Okay. And in part does the Coalition use social media as
14 a means of educating and communicating to illuminate and shape
15 policy debates?

16 A. That would be one way of communications that we engage in.

17 Q. Okay. And you have your own account on Twitter or X?

18 I'm not sure what it is called these days.

19 Is that right?

20 A. That's correct.

21 Q. Okay. And it's --

22 A. Excuse me. When you say your own, do you mean me
23 personally or CGG?

24 Q. You personally.

25 A. I personally do.

1 Q. Okay. And CGG, does it have its own X or Twitter account?

2 A. Yes.

3 Q. And who has the authority to post on CGG's Twitter
4 account?

5 A. I do. And right now I can't remember who else may have
6 access.

7 Q. Okay. Your account is @marilynrmarks1; is that right?

8 A. That's correct.

9 Q. Okay. And you recognize that given, you know, the
10 visibility of the Coalition and your own that people do follow
11 you on Twitter and look for election information; is that fair?

12 A. Yes, that's fair.

13 Q. Okay. In the line right above the one we just looked at,
14 can you just read that into the record, the we will engage?

15 A. Yes.

16 We will engage in litigation and inform legislative policy
17 on these issues.

18 Q. Okay. And so this case is fulfilling that part of the
19 mission which is engaging in litigation; is that right?

20 A. I don't know that we would say that we are fulfilling the
21 mission. But it is one effort in addressing our mission.

22 Q. Okay. It is at least consistent with the mission
23 statement; is that fair?

24 A. Yes.

25 Q. All right. And you have volunteers or the Coalition has

1 volunteers who dedicate their time to this litigation effort;
2 is that right?

3 **A.** We do.

4 **Q.** Okay. And the Coalition also engages in lobbying efforts?
5 And by lobbying, I mean advocating for or against
6 legislation. And I'm specifically talking about in the State
7 of Georgia right now at the Georgia General Assembly; is that
8 right?

9 **A.** We have not had the opportunity to do much this year at
10 all, primarily because of our work in this litigation. So I
11 can't --

12 **Q.** Me either.

13 **A.** -- I can't admit to doing very much this year.

14 **Q.** Understood this year.

15 But certainly in years prior, the Coalition has engaged in
16 advocating for or against legislation at the General Assembly?

17 **A.** We have done that to a minor degree in terms of direct
18 lobbying. Because, of course, as a 501(c)(3), we are limited
19 in the amount of resources that we can spend on lobbying.

20 So our efforts have been more about educating voters,
21 educating election officials. And then from there, many of
22 them carry the lobbying efforts forward.

23 But to some degree, yes.

24 **Q.** All right. And understanding that this year or at least
25 this quarter has been challenged by this lawsuit, at least in

1 prior years, is it true that the Coalition has engaged in
2 advocating for or against local election policy?

3 And by that, I mean boards of education or county
4 governments that may impact elections.

5 **A.** I don't know that we have done anything on a board of
6 education.

7 **Q.** Did I say education?

8 **A.** Yes.

9 **Q.** I meant elections. I'm sorry.

10 THE COURT: Yes.

11 THE WITNESS: Do you mind asking me the question
12 again?

13 BY MR. BELINFANTE:

14 **Q.** Not a problem.

15 The Coalition in years past has engaged in advocacy for or
16 against policies of local boards of elections in Georgia; is
17 that right?

18 **A.** That's correct.

19 **Q.** Okay. And has it engaged -- and it's done so in
20 North Carolina as well; is that right?

21 **A.** That's correct.

22 **Q.** Okay. You are familiar with the SAFE Commission in
23 Georgia, aren't you?

24 **A.** Yes.

25 **Q.** And you spoke to the SAFE Commission as well when it was

1 meeting; is that right?

2 **A.** I did.

3 **Q.** And you did so at least on 13 June 2018; is that right?

4 **A.** I certainly don't remember the dates. But I accept that
5 there may be a record that proves that.

6 **Q.** Okay.

7 **A.** I did speak to them.

8 **Q.** All right. Let's see.

9 Do you recall speaking to then State Representative, now
10 Judge, Barry Fleming or calling you to speak to the SAFE
11 Commission on or around that time?

12 **A.** I don't remember Representative Fleming or Judge Fleming
13 now specifically calling me, but I do recall speaking, and I
14 know he was on the commission. So I don't deny that maybe he
15 called me to speak.

16 **Q.** All right. Do you recall advocating before the SAFE
17 Commission against Georgia adopting a uniform system of
18 election voting technology?

19 And by that, I mean choosing one vendor to be used across
20 the state.

21 **A.** Quite frankly, I don't recall that specifically.

22 MR. BELINFANTE: May I approach the witness, Your
23 Honor?

24 THE COURT: Yes.

25

1 BY MR. BELINFANTE:

2 **Q.** At this point I'm just going to refresh or attempt to
3 refresh your memory.

4 I'm going to mark -- I may not admit it -- Defendants'
5 Trial Exhibit 1279, which is a transcript of the 18 June
6 meeting of the SAFE Commission.

7 And your statements begin on Page 143. If you could turn
8 there.

9 **A.** Okay.

10 **Q.** And I will tell you that the discussion about the uniform
11 system or your statements on it begin on Line 23 of Page 143.

12 **A.** Yes.

13 Did you want me to review my entire statement or was --

14 **Q.** I don't -- I don't think so. But certainly if I ask you
15 something and you don't remember, feel free to do so.

16 So having reviewed that transcript, do you now recall
17 having argued against the State adopting a uniform system?

18 **A.** I don't recall this per se. But certainly this reflects
19 what my position would have been at the time and still is.

20 **Q.** Okay. And, in fact, you described that as one of the,
21 quote, foundational issues that you wanted to address with the
22 SAFE Commission; is that right?

23 **A.** The fact of a uniform voting system?

24 **Q.** Yes.

25 **A.** Yes.

1 Q. Okay. In fact, you told the SAFE Commission that it was a
2 bad practice; is that right?

3 A. That's correct.

4 Q. Okay. All right. Are you familiar with legislation
5 passed in the 2019 General Assembly known as House Bill 316?

6 A. I am familiar with it.

7 Q. Okay. And you would agree with me that House Bill 316 is
8 what mandated uniform voting systems across Georgia and
9 particularly electronic -- or excuse me, ballot-marking
10 devices?

11 A. Let me break that down.

12 Q. Sure.

13 A. I believe previous legislation had mandated a uniform
14 voting system across Georgia back in 2002.

15 Q. Right.

16 A. But HB 316 was the one that further refined it or changed
17 it to electronic ballot-marking devices.

18 Q. All right.

19 THE COURT: So the 2002 bill was for the DREs and
20 making those uniform -- mandate for those to be handled
21 uniformly across the state, and then you are just saying the
22 2019 swapped that out with the BMDs?

23 THE WITNESS: Yes, Your Honor.

24 MR. BELINFANTE: May I approach the witness, Your
25 Honor?

1 THE COURT: Yes.

2 BY MR. BELINFANTE:

3 Q. Have you gone to the General Assembly's website before?

4 A. Yes.

5 Q. To look up legislation?

6 A. Yes.

7 Q. And so you are familiar with it?

8 A. Yes.

9 Q. Okay. Let me show you what we have premarked as
10 Defendants' Trial Exhibit 1275.

11 Does this appear to be a screenshot taken from the General
12 Assembly's website?

13 A. It does.

14 Q. Okay. Does it appear to be a true and accurate
15 representation of the legislative history of House Bill 316 as
16 demonstrated on the General Assembly's website?

17 A. I wouldn't know if it is completely accurate. But it
18 looks reasonable.

19 Q. Okay. Any reason to doubt that this is from the website
20 --

21 A. I don't have any reason to doubt it.

22 Q. Okay. And you can see at the bottom, just for the record,
23 the website address?

24 A. Yes.

25 Q. Okay.

1 MR. BELINFANTE: Your Honor, at this time I would
2 move to enter into evidence Defendants' Trial Exhibit 1275.

3 THE COURT: Could I see it?

4 MR. BELINFANTE: Yes, Your Honor.

5 THE COURT: What did you describe 1275 as?

6 MR. BELINFANTE: Are you talking to me or the
7 witness, Your Honor?

8 THE COURT: You.

9 MR. BELINFANTE: A printout from the General
10 Assembly's website where you can track legislation and you can
11 see the legislative history in terms of that bottom, where it
12 says status history. That is what I'll be asking questions
13 about.

14 THE COURT: Okay. I thought you were doing something
15 else.

16 All right. Go ahead.

17 MR. BROWN: Your Honor, we have -- without conceding
18 relevance, we have no objection.

19 THE COURT: All right.

20 BY MR. BELINFANTE:

21 **Q.** Ms. Marks, do you see that -- on the first page that
22 category called status history?

23 **A.** Yes.

24 **Q.** Okay. And you have used the General Assembly's website on
25 things like this to track legislation; is that right?

1 **A.** I have.

2 **Q.** Okay. And this looks like what you would see on the
3 General Assembly's website?

4 **A.** Yes. Generally.

5 **Q.** Okay. You see where it says on March 13, 2019, the Senate
6 passed House Bill 316?

7 **A.** Yes.

8 **Q.** Okay. And then the next day the House agreed to the
9 Senate's version?

10 **A.** Yes.

11 **Q.** Okay. And the Governor signed the bill on April 2nd,
12 2019.

13 Do you agree with me on that?

14 **A.** Yes.

15 **Q.** All right. Would you also agree with me that the
16 Secretary's office formally released a request for bid for
17 proposals on March 15, 2019?

18 And by request for proposals, I mean for a new voting
19 system.

20 **A.** I know that they released an RFP, but I have no idea of
21 the date.

22 **Q.** Okay. Any reason to question --

23 **A.** I'm sorry.

24 **Q.** Any reason to question that it was March 15, 2019?

25 **A.** No, I don't have any reason to question that.

1 Q. All right. And do you recall the Secretary of State's
2 office awarding that procurement or contract to Dominion Voting
3 Systems on July 29, 2019?

4 A. I remember it was in late July that they did sign that
5 contract. But I could not have told you it was the 29th.

6 Q. Okay. Any reason to doubt that date?

7 A. No.

8 Q. Okay. So you would agree with me that House Bill 316
9 adopted the uniform voting system or readopted, I should say,
10 that the Coalition urged it not to do?

11 A. Correct.

12 Q. Okay. And in response, the Coalition filed the first
13 supplemental complaint in this case on October 15, 2019; is
14 that right?

15 A. I don't know that I would have used the word, you know, in
16 response necessarily, because there were a number of activities
17 that we were undertaking to try to seek a change in the
18 State's decision.

19 Q. Okay. Right. So you were using the lawsuit to find a way
20 to invalidate or otherwise prevent the State from enforcing
21 provisions of House Bill 316; is that right?

22 A. That was -- it was one of the activities we engaged in to
23 try to reverse what we saw as an inappropriate decision.

24 Q. Okay. You also continued to advocate against -- or to
25 advocate to either repeal or otherwise amend House Bill 316 and

1 specifically the unitary voting system; is that right?

2 **A.** And, specifically, the electronic ballot-marking devices.

3 **Q.** Okay. And sorry. When I say you there, I meant the
4 Coalition.

5 **A.** I understand.

6 **Q.** Okay.

7 **A.** And I answered that way.

8 THE COURT: Now, I would like counsel to clarify.
9 Are you pursuing the question of a unitary system or are you --
10 the witness just clarified she also -- that it was about the
11 BMD system.

12 So if the whole focus is the unitary system, it would
13 help me understand where you are going.

14 MR. BELINFANTE: Sure, Your Honor. In some ways, it
15 is both. I'm about to get into the election system. But the
16 unitary system is part of what the advocacy was against.

17 And so I'm now getting into the election system, and
18 Ms. Marks jumped ahead and answered my question that it was
19 also the ballot-marking device.

20 THE COURT: All right. Well, I'll wait and see how
21 you proceed.

22 MR. BELINFANTE: Okay.

23 BY MR. BELINFANTE:

24 **Q.** Just so we can clear up and make things -- part of the
25 reason the Coalition filed its first supplemental complaint in

1 this lawsuit was to prevent the State from enforcing the
2 requirement that ballot-marking devices were used for in-person
3 voting in Georgia; is that fair?

4 **A.** I would say that it was to prevent the enforcement of all
5 in-person voters being forced to use the BMDs. We certainly do
6 not, in any way, challenge the use of BMDs for voters who need
7 the assistance from a technology standpoint.

8 **Q.** Okay. And the Curling plaintiffs joined in the
9 Coalition's efforts in October of 2019; is that right?

10 MR. CROSS: Object to vague. I'm not sure what
11 efforts we're talking about.

12 MR. BELINFANTE: That's fair.

13 BY MR. BELINFANTE:

14 **Q.** When the Coalition filed its first supplemental complaint
15 in October of 2019, the Curling plaintiffs also filed an
16 amended complaint challenging the use of BMDs in Georgia
17 elections.

18 Do you recall that?

19 **A.** Yes.

20 **Q.** Okay. And part of the Coalition's contention at least was
21 that the State would not have the BMDs deployed and ready for
22 the March 2020 presidential preference primary; is that right?

23 **A.** Do you mind repeating that question for me?

24 **Q.** Sure.

25 Again, focusing on the first supplemental complaint, part

1 of the Coalition's challenge was that the State would not have
2 the BMDs deployed and ready for use in the March 2020
3 presidential preference primary; is that right?

4 **A.** I believe that is correct.

5 **Q.** Okay.

6 Is it true, Ms. Marks, that the Coalition is made up
7 mostly of volunteers?

8 **A.** Absolutely.

9 **Q.** Okay. And the volunteers -- and excuse me, the Coalition
10 also has interns; is that right?

11 **A.** We have had. We don't have any right now.

12 **Q.** Okay. Volunteers for the Coalition are not paid; correct?

13 **A.** That's correct.

14 **Q.** Interns have been paid at least sometimes in the past; is
15 that right?

16 **A.** Yes. Modest amounts.

17 **Q.** Okay. Does the Coalition tell volunteers that in order to
18 volunteer for the Coalition they have to do certain things?

19 So let me give you a hypothetical is what I'm talking
20 about.

21 I want to go volunteer for the Coalition. And you say we
22 really need people in Bartow County to go watch an audit. And
23 I say I'm not interested in that issue, I would rather do
24 something else.

25 Does the Coalition say, well, then you can't be a

1 volunteer for the Coalition?

2 **A.** Certainly not.

3 **Q.** Okay. And it is true that the Coalition does not keep
4 records of volunteer time; is that right?

5 **A.** We don't keep very specific records of volunteer time.
6 But in some cases, we have done so. I've asked people to do
7 that for certain specific tasks, but generally no.

8 **Q.** Okay. Interns, though, the Coalition has tried to
9 maintain records of their time; is that right?

10 **A.** That's right. Because we have paid them by the hour.

11 MR. BELINFANTE: Okay. May I approach, Your Honor?

12 THE COURT: Yes.

13 MR. BELINFANTE: Is it Your Honor's preference that I
14 present you with a document before I move to admit?

15 THE COURT: I don't care. Whatever is easiest. If
16 there is going to be an objection, of course I want to see it.

17 MR. BELINFANTE: Sure.

18 BY MR. BELINFANTE:

19 **Q.** Ms. Marks, do you recognize the document I just put before
20 you?

21 **A.** I do.

22 **Q.** Okay. How do you recognize it?

23 **A.** How do I recognize it?

24 **Q.** Well, let me just ask you. What is it?

25 Sorry, it is just some of the formalities we have to do.

1 What is it?

2 **A.** Okay. It appears to be a copy of Coalition for Good
3 Governance and the Coalition Plaintiffs' First supplemental
4 Complaint on Plaintiff Coalition for Good Governance, Laura
5 Digges, William Digges, III, Ricardo Davis, and Megan Missett.

6 **Q.** Okay. I may be presuming, but you probably are going to
7 need to slow down in the future when you --

8 **A.** Okay.

9 **Q.** -- read stuff.

10 **A.** Thank you.

11 **Q.** I do the same thing.

12 And does this appear to be a true and accurate copy of the
13 Coalition's first supplemental complaint?

14 **A.** I assume that it is.

15 **Q.** Okay.

16 MR. BELINFANTE: Your Honor, I would move to enter
17 into evidence Defendants' Trial Exhibit 1263.

18 Sometimes you move them into evidence. Sometimes you
19 don't if they're in the docket. I just thought it would be
20 easier if I was referring to it with the witness.

21 MR. BROWN: No objection.

22 THE COURT: It is admitted.

23 BY MR. BELINFANTE:

24 **Q.** All right. Let's talk about just some terms generally as
25 it relates to this.

1 When I say BMDs, can we agree that I'm referring to the
2 actual Dominion BMDs themselves as they are currently
3 configured in and for Georgia elections?

4 **A.** Right.

5 **Q.** Okay.

6 **A.** And that would include the touch screen and the printer?
7 Is that what we're talking about?

8 **Q.** No. Thank you for that.

9 I'm talking about just the touch screen itself. When I
10 say BMDs, that is what I'll be referring to.

11 **A.** That is going to be hard, but okay.

12 **Q.** Okay. And I may at some point separate them out --

13 **A.** Okay.

14 **Q.** -- but typically I'll be referring to the touch screen
15 itself.

16 **A.** Okay.

17 **Q.** And similarly, when I say scanner, I'm referring to what
18 is referred to frequently as an ICP or tabulator as it is
19 currently configured in and for Georgia elections.

20 Is that fair?

21 **A.** The ICP only? Not the ICC? Is that what you are saying?

22 **Q.** The scanner or the tabulator that is used.

23 **A.** Okay. I'm going to assume that you mean the precinct
24 scanner.

25 **Q.** Yes. Yes.

1 **A.** Okay.

2 **Q.** Not the --

3 **A.** Not the ICC scanner.

4 **Q.** Not -- correct.

5 **A.** Okay.

6 **Q.** If I'm talking about the central scanner, I'll say central
7 scanner.

8 **A.** Okay.

9 **Q.** Great point.

10 And when I refer to Poll Pads, I'll be talking about those
11 operating on the KNOWiNK software just as Poll Pads as they are
12 currently configured and used in Georgia.

13 Is that fair?

14 **A.** That's fine.

15 **Q.** Okay. And when I talk about printers, I'll mean literally
16 the printers that print the -- and I know we may disagree on
17 this -- the verifiable human ballot that comes out of the BMD.

18 Why don't I do it this way?

19 When I say printer, I just mean the printer that prints
20 out the response from the BMD touch screen.

21 Is that fair?

22 **A.** That's fair.

23 **Q.** Okay.

24 THE COURT: When you say you're going to refer to the
25 KNOWiNK, when was the KNOWiNK -- are you basically jumping

1 ahead? Because KNOWiNK was not the original.

2 MR. BELINFANTE: Yes, Your Honor, because I'm talking
3 about how it is currently configured.

4 THE COURT: Okay. Fine.

5 BY MR. BELINFANTE:

6 **Q.** And if I say election equipment, I'll be referring to all
7 of that, the Poll Pad, the printer, the BMD touch screen, and
8 the precinct scanner, unless I say central scanner.

9 **A.** And you will --

10 MR. BROWN: I'm going to object to that, Your Honor.
11 Because it is just a fraction of the election equipment. It is
12 designed to be confusing.

13 MR. BELINFANTE: How is it designed to be confusing?
14 I just said four things.

15 What would you like me to call it and I will call it
16 something else?

17 MR. BROWN: If you're talking about a particular
18 piece of equipment, name the particular piece of equipment.

19 MR. BELINFANTE: Why don't I call it --

20 MR. BROWN: I'll withdraw that. We'll see where it
21 goes, but there is a problem with that definition.

22 MR. BELINFANTE: That's fair. Okay.

23 BY MR. BELINFANTE:

24 **Q.** All right. Let me ask you a few threshold questions about
25 the Coalition's claims in this litigation as represented by the

1 first supplemental complaint.

2 The Coalition is not seeking, as you said, I believe, to
3 prohibit disabled Georgians from using the BMD touch screens,
4 printers, and precinct scanners; is that right?

5 **A.** Correct.

6 **Q.** Okay.

7 THE COURT: Speak up. Thank you. I need to myself.
8 BY MR. BELINFANTE:

9 **Q.** Is the Coalition alleging that it is attempting to protect
10 its members' right to have their votes counted as cast if they
11 are required to vote on Georgia's BMD voting system?

12 **A.** Yes.

13 **Q.** Okay. Now, if a vote is not counted as cast, an example
14 of that would be if I were to go in and vote for Senator
15 Warnock and that is what I touch on the screen but the vote is
16 counted as me voting for Herschel Walker, for example, that
17 would be an example of a vote not being counted as cast; is
18 that right?

19 **A.** That is not what I would define.

20 **Q.** Okay. What is an example of something of a vote not being
21 counted as cast then?

22 No. Before that, why is that not a situation of a vote
23 not being counted as cast?

24 **A.** Okay. As I understood your example, you were saying that
25 as you touched Senator Warnock that somehow that implied that

1 was casting the vote.

2 **Q.** Okay.

3 **A.** And then you jumped to how it was counted. And as we see
4 it, you don't cast your ballot at the touch screen. You cast
5 your ballot as it is being scanned.

6 So in your example, we don't know what your ballot read,
7 whether it said Senator Warnock or someone else.

8 **Q.** Okay. But you would agree that there is no injury if I
9 intend to vote for Senator Warnock and I submit my ballot to
10 the scanner and it is scanned as a vote for Senator Warnock?

11 **A.** I would not agree that there is no injury if you were
12 talking about, you know, the system in general -- having to
13 vote on that system in general.

14 But I would agree that, you know, if your ballot that you
15 had presumably verified and cast into the scanner is counted as
16 a vote for Senator Warnock that, no, there is no specific
17 injury on that.

18 **Q.** Okay. And you're not suing the State to address a
19 situation where a voter intends to vote for a candidate, puts
20 their ballot in the scanner, and it is counted as voting for
21 that candidate; correct?

22 **A.** I try to stay away from the concept of voter intent so
23 much because we can debate that so much. But we are not suing
24 about the tabulation of -- the accurate tabulation of ballots
25 as cast and properly recorded.

1 Q. Okay. I guess -- go ahead.

2 A. That is not the core -- that is not the core of the claims
3 that are remaining in the lawsuit right now.

4 Q. All right. So then I guess that's where I'm confused.

5 Is a voter for whom the Coalition is seeking to protect
6 who -- is the concern that the voter psychologically does not
7 know when they put their ballot into the scanner how it is
8 counted, even if it is counted correctly? Is that the injury
9 that you are claiming?

10 A. There are a number of injuries.

11 Do we really want to walk through them or --

12 Q. Well, I would like you to answer that question.

13 A. Okay. Repeat the question again for me about the
14 psychology.

15 Q. Well, I guess I'm trying to get to: What is the injury --
16 is a voter injured if they cast a ballot and it is counted as
17 they cast it?

18 And by casting the ballot, I mean using the BMD equipment.

19 A. It is certainly -- they certainly may be.

20 MR. CROSS: Objection, Your Honor. Misstates facts.
21 They don't cast a ballot on a BMD. I think we're agreed on
22 that.

23 MR. BELINFANTE: Okay. I will reframe the question.

24 BY MR. BELINFANTE:

25 Q. A voter who casts a ballot by inserting it -- and by

1 ballot, I mean the paper ballot printed from using a BMD.

2 If a voter takes that piece of paper, puts it into the
3 scanner, and the scanner recognizes what the voter intended,
4 i.e., I meant to vote for Warnock, the scanner counts it as a
5 vote for Warnock, is that an example of a voter who has had
6 their ballot counted as cast?

7 THE COURT: Wait a second. Are you saying -- I just
8 want to make sure I understand your question.

9 Of course there is the printing of the ballot, which
10 the person can see. Then they put it into the scanner.

11 And when are you saying they see the ballot -- see
12 the result of that?

13 MR. BELINFANTE: I'm not saying they see the result.
14 I'm trying to determine if the ballot is counted as cast. So I
15 vote for Warnock. I insert it in the scanner and it is
16 tabulated or counted as a cast for -- or a vote for Warnock.

17 THE COURT: That's what I'm sort of -- it is that
18 nub -- last nub of it that I don't understand how you are
19 asking that question to the witness.

20 Because how would -- how would she know whether it
21 was counted for -- who it was counted for?

22 I mean, as a voter, none of us know. We hope that is
23 so. That is what our trust is in the system. But there is
24 nothing that comes out and says -- is there? -- that I voted
25 this way? Here is your receipt, like you do in a grocery

1 store.

2 MR. BELINFANTE: No, there is not a receipt. There's
3 not --

4 THE COURT: Okay. All right.

5 MR. BELINFANTE: And that's what I am just trying to
6 determine when the plaintiffs, and particularly here the
7 Coalition Plaintiffs, say their injury is that they do not know
8 if their vote is counted as cast.

9 THE COURT: And that's fine. You can pursue that all
10 you want. But your example, as you've described it, would
11 almost imply that, in fact, there is a receipt. So --

12 MR. BELINFANTE: Okay.

13 THE COURT: So, I mean, it is just sort of -- seems
14 to --

15 MR. BELINFANTE: I'll ask it this way.

16 THE COURT: -- take a conversation in a weird
17 direction.

18 MR. BELINFANTE: Okay. I don't mean to do that.

19 BY MR. BELINFANTE:

20 **Q.** Let me ask it this way, Ms. Marks.

21 Can a voter in Georgia, whether voting by hand-marked
22 paper absentee ballot or through use of the BMD system, BMD
23 touch screen printer, scanner, know that their vote was counted
24 as cast?

25 **A.** Generally not.

1 Q. Okay.

2 A. Not their individual ballot.

3 Q. Okay. Is it the Coalition's position that BMDs in Georgia
4 in elections do not work as they are programmed?

5 A. You're asking me if we believe -- we, CGG, believe that
6 the touch screens are generally not programmed correctly?

7 Q. Let me ask it this way: If a BMD is operating as it
8 should, so no malware, no bugs, you know, it is operating as it
9 should be, i.e., I press the button for Senator Warnock, my QR
10 code is printed out, it says Senator Warnock on the human
11 readable portion of it, and I scan it and it counts as a vote
12 for Warnock -- that is what I mean by working as it should.

13 Is it the Coalition's position that in Georgia elections
14 the BMDs do not work as they are programmed?

15 A. We have not taken a position on that one way or another
16 for the reason that we have no way to determine the answer to
17 that. But we've not said that they were -- they are or are
18 not.

19 Q. And to that point, you would agree with me that you can't
20 determine, for the same reasons perhaps, that a hand-marked
21 absentee ballot has been counted as the voter intended?

22 A. I would disagree with that.

23 Q. Okay. Why?

24 A. Because when a voter marks a hand-marked paper ballot, it
25 is a permanent record of that voter's marking of their vote,

1 their activity. And so long as we have that permanent record,
2 election officials can review that, presumably in public, and
3 the vote tallies or the election outcome can be verified.

4 **Q.** Okay. You would agree with me, though, that the BMD
5 creates a permanent record in the form of a paper ballot?

6 **A.** It is a permanent record. But not necessarily of the
7 voter's activity or intent.

8 **Q.** And I'm not -- wasn't asking that. But it is --

9 **A.** It is a permanent record, yes.

10 **Q.** Just like the hand-marked paper absentee ballot?

11 **A.** No, not just like it.

12 **Q.** No, no. And let me be specific.

13 They are both permanent records? That is all I'm asking
14 right now.

15 **A.** If that is all you're asking, that is correct, unlike a
16 DRE.

17 **Q.** Correct. Okay.

18 And if the BMD is working as programmed, then the paper
19 ballot presented by the BMD contains the same assurances as a
20 hand-marked paper ballot that a voter can submit?

21 **A.** No.

22 **Q.** Okay.

23 **A.** Not necessarily.

24 **Q.** Is it your position that the BMD -- or excuse me.

25 Is it the Coalition's position that a BMD has to be

1 manipulated or altered intentionally or unintentionally in
2 order to not reflect the intent of the voter?

3 **A.** I don't think that that is anything that we can know.
4 Because when the voter selects his choice on the touch screen,
5 that is the point at which the voter is expressing his will.

6 And so we cannot say that that is immediately translated
7 and correctly translated on to that permanent record that
8 you're talking about.

9 **Q.** And I guess what I'm asking is more of a hypothetical.

10 **A.** Okay.

11 **Q.** Presume I intend to vote for Senator Warnock. I press the
12 button on the touch screen for Senator Warnock. The ballot
13 comes out, and on the human -- verifiable human readable
14 portion, it says Senator Warnock.

15 The QR code, presume, conveys a vote for Senator Warnock.
16 It is scanned into the system, and the scanner counts it as a
17 vote for Senator Warnock.

18 With that presumption, is it the Coalition's understanding
19 that that would be a situation where the BMDs are working as
20 they are programmed?

21 **A.** It sounds that way, yes. Well, working as perhaps
22 intended.

23 **Q.** Correct. Okay. Fair enough.

24 **A.** Maybe not programmed.

25 **Q.** All right. Now, the Coalition's position is that the

1 BMDs -- or the Coalition's position today is that in future
2 elections Georgians who vote in person should have -- let me
3 rephrase.

4 The Coalition's position today is that the State should
5 not enforce a requirement that counties have the current
6 Dominion BMD election system as the means of voting in person?

7 **A.** Not the required means of voting in person. Again, with
8 our exception for voters who need assistance.

9 **Q.** Okay. And you recognize that the Court has already
10 decided that it cannot order the Georgia legislature to pass
11 legislation creating a paper ballot voting system or judicially
12 impose a statewide paper ballot system as injunctive relief in
13 this case?

14 **MR. BROWN:** Your Honor, I would object to this line
15 of questions. This is getting into a legal debate over what
16 the Court has ordered or not.

17 I can answer that question if you want. But I don't
18 know if it is necessary to have a witness, a fact witness,
19 testify as to that.

20 **THE COURT:** All right. Start again.

21 **MR. BELINFANTE:** I'll start again.

22 **THE COURT:** I mean, it is just also a waste of time,
23 frankly.

24 But go ahead. You start again.

25

1 BY MR. BELINFANTE:

2 Q. You would agree with me that the Court has said it will
3 not order and cannot order the State to require hand-marked
4 paper ballots be used in Georgia?

5 MR. BROWN: Same objection.

6 THE COURT: I thought you were going to restate.

7 MR. BELINFANTE: I did. Previously I read the
8 summary judgment order, and so I tried to --

9 THE COURT: Well, it is no different.

10 MR. BELINFANTE: I tried to take out some legal
11 terms.

12 THE COURT: All right. Go ahead. I'm sure the
13 witness understands.

14 MR. BELINFANTE: Yeah.

15 THE WITNESS: Do you mind repeating that question one
16 more time for me? I apologize.

17 BY MR. BELINFANTE:

18 Q. You understand that if the Coalition and/or the Curling
19 plaintiffs and/or Mr. Davis are successful in this litigation
20 that there will not be a mandate that the State use hand-marked
21 paper ballots in future elections?

22 MR. BROWN: Your Honor, I object. He is asking the
23 fact witness to project what this Court might or might not do.
24 It is not useful. It is a waste of time. And it is
25 irrelevant.

1 THE COURT: All right. I sustain the objection.

2 MR. BELINFANTE: Your Honor, at this point I would
3 ask the witness to leave the stand so that I can respond to
4 Mr. Brown's objection without the witness present.

5 THE COURT: No. You can do that later. This is just
6 not that important. You can return to it later. Keep on
7 moving. And then we will -- I'll be happy to break. You can
8 return to it once we get --

9 BY MR. BELINFANTE:

10 Q. If the Coalition were not to obtain judicial relief in
11 this case requiring the use of hand-marked paper ballots, would
12 your concerns or would the Coalition's concerns about Georgia
13 elections and its members that it is trying to protect be
14 satisfied?

15 MR. CROSS: Your Honor, I'll object. Misstates facts
16 as we have been clear no one is seeking hand-marked paper
17 ballots as relief.

18 MR. BELINFANTE: That is the point of the question,
19 Your Honor. I'm allowed to --

20 MR. CROSS: Just ask her that.

21 MR. BROWN: Your Honor, we can argue that as Your
22 Honor has already found that if the State is enjoined from
23 using BMDs as a matter of Georgia state law they will use
24 hand-marked paper ballots. We can argue that. It has nothing
25 to do with this witness.

1 MR. BELINFANTE: It has everything to do with this
2 witness. And I'm happy --

3 MR. BROWN: If there is a foundation for relevancy
4 for this witness, then --

5 MR. BELINFANTE: Mr. Brown, I was speaking.

6 I would be happy to get and -- explain it. I'm not
7 comfortable doing it in front of the witness. I think that is
8 inappropriate.

9 THE COURT: All right. Would you mind excusing us
10 for a while and just go outside.

11 **(The witness exited the courtroom.)**

12 MR. BELINFANTE: Thank you.

13 If I may, Your Honor. The relevancy of the question
14 is that if the witness recognizes as executive director of the
15 Coalition, a party in this case, that hand-marked paper ballots
16 will not be ordered, but also believes that they will have an
17 injury remaining if the BMDs are made even available and not
18 prohibited, that speaks to redressability.

19 It also speaks to traceability if a county chooses,
20 who is not here -- there are no counties here -- to continue to
21 use the ballot-marking devices as opposed to a hand-marked
22 paper ballot. That's the purpose of the questions.

23 MR. BROWN: Your Honor, there's no fact issue in
24 there. This is a legal position, number one.

25 Second, as a legal position, it is wrong.

1 Traceability only requires a portion of the relief. Not the
2 entire relief. And so as a standing argument, it is empty.

3 But this isn't a question for a witness, Your Honor.
4 This is an argument that he is making. And he can make it in
5 closing. He is trying to do it pre-closing here.

6 MR. BELINFANTE: No, I'm not, Your Honor.

7 MR. CROSS: Josh, can I just respond real quick?

8 MR. BELINFANTE: Sure, of course.

9 MR. CROSS: Your Honor, just to echo Mr. Brown, I
10 agree with everything, that this is not an appropriate question
11 for this witness.

12 But also, Your Honor, Mr. Belinfante does have the
13 law wrong. There are numerous cases we'll point Your Honor to
14 when we get to it that make clear, including out of the Supreme
15 Court. I'll point you to *Brown v. Plata*, 563 U.S. 493, 2011.
16 The power of a Court of equity to modify a decree of injunctive
17 relief is long established, broad and flexible. The court that
18 invokes equity power to remedy a constitutional violation by an
19 injunction mandating systemic changes to an institution has the
20 continuing duty and responsibility to assess the efficacy and
21 consequences of its order.

22 That is one example. There are numerous others that
23 all stand for the basic proposition a court has broad equity
24 powers once it finds a constitutional violation to determine
25 what the scope of the relief is.

1 What Mr. Belinfante is focused on is one aspect. It
2 may very well be that if Your Honor were not to order
3 hand-marked paper ballots, which, again, no one is asking for
4 in this courtroom, so I'm not sure why we're focused on it.

5 But even if that were the case, the fact that some
6 injury may remain doesn't mean that there is no redressability.
7 That is true in every case that is ever brought.

8 Your Honor will determine the full scope of relief.
9 And we may think, at the end of the day, you have not fully
10 remedied the injury that we have asserted. That doesn't mean
11 that there is no redressability in terms of what has been
12 mitigated at least in part.

13 So this entire line of questioning has nothing to do
14 with anything happening in this courtroom. And it is premised
15 on a wrong legal premise.

16 MR. BELINFANTE: May I respond or do you want --

17 THE COURT: Yes.

18 MR. BELINFANTE: Your Honor, it is about
19 redressability and remedy. And the fact question at issue is
20 she's identified her injury that votes may not be counted as
21 cast. And the fact issue -- and because the Coalition is doing
22 that on behalf of members generally. The fact question is in
23 order to address that concern can it happen in an election with
24 BMDs or can it only be satisfied if hand-marked paper ballots
25 are required.

1 THE COURT: Well, there are many other options. And
2 I mean, it is almost like you are giving -- it is a merger
3 trick question. And it doesn't elicit meaningful testimony.

4 I mean, I think that there are ways of asking this
5 which are not just simply -- because the whole area is so
6 legalistic and you framed it in a way that is one that a
7 layperson, even a very smart layperson such as this witness,
8 wouldn't -- would not know how to navigate.

9 And so, you know, we're trying to get at something
10 real, not just a trick -- not a trick question. So, you know,
11 there are ways of asking this. And I ask you to think about
12 that.

13 But -- I mean, I can rephrase it for you if you want.
14 But, I mean, there are -- the most obvious one, though, is, all
15 right, the judge has said in this order that she cannot
16 order -- that this Court cannot order so -- this. So are there
17 other forms of relief that you think that would address your
18 concerns about -- whether people's votes will be counted as
19 cast, since she has said that?

20 Or is it all or nothing for you? I mean -- and
21 how -- I mean, that will remedy what you consider the wrong
22 here, or the injury here. But -- I mean, that is a little more
23 straightforward, but ...

24 MR. CROSS: Your Honor, if I -- two quick follow-ups
25 on that.

1 One, she did say that she's prepared to identify all
2 the forms of injury. Mr. Belinfante is asking about one
3 particular -- about whether the vote is counted as cast.

4 There's already been testimony from plaintiffs in
5 this case that part of the injury is also the fact that for
6 many voters who can't verify a BMD ballot they have no way of
7 knowing whether the ballot of record reflects their selections
8 even as to the human readable text.

9 So there is -- part of it is we're not getting the
10 full scope of the injury in the questioning.

11 And the last point, Your Honor, is, on this issue of
12 redressability, Your Honor's 2019 injunction puts the nail in
13 the coffin of this argument we keep hearing here. When Your
14 Honor ordered that they could not use the BMD -- the DRE
15 system, there was no one from the State that took up an appeal
16 and said, well, we can't help with that.

17 As Secretary Raffensperger has said himself,
18 including in Congressional testimony, his first job was to shut
19 down the DRE system and replace it with a BMD system because
20 that is what the Secretary's office was required to do.

21 So we keep hearing an argument that just has no legs.
22 It is a waste of time.

23 MR. BELINFANTE: It is not a waste of time. The
24 problem is Mr. Cross ignores the entire legislative branch of
25 government which passed House Bill 316 before the order and

1 that is what Senator -- or Secretary Raffensperger was
2 responding to.

3 THE COURT: All right. Listen, this is not helpful.
4 I mean, you can all argue like that all you want within a
5 two-hour frame on Thursday. But this is not helpful for this
6 witness. That makes almost the point that you-all are like
7 this and -- about this issue. And I understand that.

8 But, you know, you've got -- there are many things
9 that this witness can testify to. But you're not going to hang
10 her on something that is just a wholly legalistic thing. You
11 can ask her a number of questions in this. And you can sit
12 down with your co-counsel and decide what you want to do.

13 MR. BELINFANTE: All right.

14 THE COURT: But I am just telling you this kind of
15 legalism here with a witness, even a smart witness who is
16 educated about the legal system to some degree but who has no
17 law degree, is not acceptable.

18 MR. BELINFANTE: All right, Your Honor.

19 **(The witness reentered the courtroom.)**

20 BY MR. BELINFANTE:

21 **Q.** Welcome back, Ms. Marks.

22 **A.** Thank you.

23 THE COURT: That sounded like it was for a game show.

24 MR. BELINFANTE: Come on down.
25

1 BY MR. BELINFANTE:

2 Q. You recall the Senate -- State Senate hearings in
3 roughly -- I think it was January of 2021 about the
4 November general election, and it was the one where Rudy
5 Giuliani came and all that stuff?

6 Do you remember those?

7 A. I remember a series of legislative committee hearings.
8 Senate and House. And I don't remember exactly which two that
9 Giuliani came to.

10 Q. Oh, sure. Sure.

11 A. Okay.

12 Q. Yeah.

13 Do you remember testimony from -- and I may be
14 mispronouncing his name -- Jovan Pulitzer?

15 A. Yes, I do.

16 Q. Okay. Fair to say you do not agree with Mr. Pulitzer's
17 testimony?

18 A. Fair to say.

19 Q. All right. We are pulling an exhibit.

20 MR. BELINFANTE: 194.

21 **(There was a brief pause in the proceedings.)**

22 BY MR. BELINFANTE:

23 Q. If you could turn in that supplemental complaint there in
24 front of you, Defendants' Exhibit 1263, to Paragraph 203. It
25 is on Page 57.

1 Are you there, Ms. Marks?

2 **A.** I am.

3 **Q.** Do you see that second bullet, reading it with the intro
4 to 203? Specifically, for example, voters who vote using BMDs
5 will be required -- the second bullet -- to cast a ballot that
6 cannot be read or verified by the voter and may not reflect the
7 voter's preferences.

8 Do you see that?

9 **A.** I do.

10 **Q.** Okay. You still agree with that?

11 **A.** Yes.

12 **Q.** Okay. Now, I understand we disagree about the QR code.
13 But would you agree with me that on the ballots printed as a
14 result of the BMD touch screen, as we currently have it, there
15 is a portion below, or at least should be, where it identifies
16 in human readable text what -- again, if it is functioning
17 properly -- the voter's choices?

18 **A.** If it is functioning properly --

19 **Q.** Correct.

20 **A.** -- it may give a different human readable text than what
21 the voter -- than the voter selected on the screen.

22 **Q.** So if it is functioning as it should, the Coalition's
23 position is that it would still --

24 **A.** No. No. I'm sorry. I'm just trying to say it doesn't
25 necessarily always function properly.

1 Q. Correct. Yeah. I'm asking --

2 A. If it functions properly ...

3 Q. Yes. If it functions properly, my vote for Senator
4 Warnock will show up as a vote for Senator Warnock in the human
5 readable text. It will say I have selected Senator Warnock.

6 Would you agree with that?

7 A. That's correct.

8 Q. Okay. And so the Coalition's concern is that people will
9 just not read that portion; is that right? Or at least one of
10 the Coalition's concerns.

11 A. That is one of many concerns. But yes, that is a concern.

12 Q. Okay. And you would agree with me that nothing prevents a
13 voter from reading the human verifiable portion -- excuse me,
14 I'm not trying to debate that point with you.

15 You would agree with me that nothing prevents a voter from
16 reviewing the text that is below the QR code?

17 A. Well, there is nothing generally, let's say, physically
18 preventing them from doing so. But as we've heard testimony,
19 people have trouble reading the very small print. People have
20 difficulty finding the time and space in a crowded -- I think
21 Megan Missett testified to that.

22 Just there were obstacles. And I have run into them in
23 North Carolina as I have tried to review my ballot. There are
24 obstacles that can prevent a voter from attempting to review
25 that human readable text.

1 Q. Okay. And conceivably the issue of small print would
2 apply equally to hand-marked paper absentee ballots as well;
3 right?

4 A. No, not generally.

5 Q. Could a voter just get some reading glasses or a
6 magnifying glass or something, if that is the issue?

7 A. Well, of course, there is supposed to be -- under the
8 State rules they are supposed to be provided. As
9 ballot-marking devices began to be understood to create
10 extremely small print, State Election Board required that
11 magnifying stations be put in. But we find that that is a rule
12 that is often -- very often broken because of the lack of
13 space.

14 Q. Broken by county election officials; correct? There is
15 not State officials that are administering those elections that
16 you just described?

17 A. Not administering. Just inspecting.

18 Q. And you are one of the few folks who have testified that
19 was here for the whole trial.

20 So do you remember Director Evans from the
21 State's testimony that the Secretary's office trains election
22 superintendents to have poll workers encourage voters to check
23 their ballots and read the text below the QR code?

24 A. Yes.

25 Q. Okay. Any reason to doubt that that is how the State --

1 THE COURT: Move on. I'm not going to have her
2 commenting on another witness' testimony.

3 BY MR. BELINFANTE:

4 Q. Let's go back to Paragraph 203 of your complaint, that
5 same second bullet.

6 Voters who vote using BMDs will be required -- second
7 bullet -- to cast a ballot that cannot be read or verified by
8 the voter and may not reflect the voter's preference.

9 Do you see that?

10 A. Yes.

11 Q. So that means at least in some cases, you would
12 acknowledge that voters using the BMD can, in fact, cast a
13 ballot that reflects their preferences?

14 MR. BROWN: Object. Mischaracterizes the allegation.

15 MR. BELINFANTE: She can say that. She can answer.
16 It is not -- it is not mischaracterizing.

17 THE COURT: You can answer.

18 THE WITNESS: I'm not sure it exactly fits with the
19 bullet point. But yes. I mean, we are not saying that the
20 votes are always wrong, by any stretch. The vote could be
21 recorded and tabulated correctly.

22 BY MR. BELINFANTE:

23 Q. Okay. That is all I am -- yeah. All right. And I
24 apologize for going back now.

25 I'm going to show you what we have premarked as

1 Defendants' Exhibit 194, which is the Tweet about Mr. Pulitzer.

2 Ms. Marks, that is your Twitter account there, the
3 @marilynmarks -- marilynrmarks1; is that right?

4 **A.** It is.

5 **Q.** Okay. Could you turn to page -- or is this a -- does this
6 appear to be a true and accurate copy of Tweets that you made
7 on or around January 1, 2021?

8 **A.** I don't have a reason to doubt it. But it has been an
9 awfully long time, and I haven't looked at it in a very long
10 time.

11 **Q.** Sure. Let's look -- and my question is centered around,
12 on the second page, a Tweet that appears to have been made on
13 May 2nd, 2021 --

14 **A.** Yes.

15 **Q.** -- in response to Atlanta Humanist.
16 Do you see that?

17 **A.** Yes.

18 **Q.** All right.

19 MR. BELINFANTE: Your Honor, I would move to admit
20 Defendants' Trial Exhibit 194.

21 THE COURT: Why is the first page part of it? Are
22 you going to be questioning her about that?

23 MR. BELINFANTE: Completeness.

24 MR. BROWN: Wait. I just didn't catch the last
25 thing -- the last exchange.

1 MR. BELINFANTE: Completeness was my answer.

2 THE COURT: I asked why was the first page part of it
3 since there is nothing on it that he is offering.

4 MR. BELINFANTE: I will be, perhaps, coming back to
5 some of the others.

6 THE COURT: Well, why don't we take it one page at a
7 time and see what you get? All right? Because there is a lot
8 of different -- there are different conversations going on
9 here. That is all I'm saying.

10 So let me see what you bring out. Okay.

11 MR. BELINFANTE: All right.

12 BY MR. BELINFANTE:

13 Q. Ms. Marks, can you read your Tweet on May 2nd, 2021?

14 A. Number 5 is cut off, and I can't see the date on that. I
15 see -- is it the one that starts South Carolina is --

16 Q. Yes.

17 A. South Carolina is like Georgia. It uses unauditable BMD
18 touch screen machines. We can never, ever know who won in
19 South Carolina or Georgia because of the use of these machines
20 in the polling places.

21 Q. Okay. Do you still believe that today?

22 A. Yes.

23 Q. All right. If Georgia were to adopt hand-marked paper
24 ballots, would we know who won elections in the State?

25 A. Assuming that other laws are followed and that there are

1 good audits to confirm the outcomes.

2 **Q.** Okay. And it is your position that there are no audits
3 that could be used to verify election results as long as a BMD
4 touch screen machine is used; is that right?

5 **A.** So long as the BMD touch screens are used in large
6 numbers. That is correct. We do not believe that BMD touch
7 screens result in auditable election outcomes.

8 **Q.** And it is the Coalition's position that no voter who uses
9 a BMD touch screen machine will know that their vote was
10 counted as cast; is that right?

11 **A.** It is hard for any voter to know that their vote was
12 counted as cast.

13 **Q.** All right. And that would include the BMD -- people who
14 use BMDs?

15 **A.** Correct.

16 **Q.** Okay. And I think you brought this up. Your concerns
17 about ballot-marking devices are not limited to Dominion
18 equipment as currently configured in Georgia; is that right?

19 **A.** That is correct.

20 **Q.** The Coalition has concerns about electronic ballot-marking
21 devices used in North Carolina; is that right?

22 **A.** That is correct.

23 **Q.** And South Carolina?

24 MR. CROSS: Your Honor, just -- sorry. Object as
25 vague.

1 Could we just get clarity?

2 Do we mean concerns within the scope of the claims or
3 more broadly?

4 MR. BELINFANTE: I can rephrase.

5 BY MR. BELINFANTE:

6 **Q.** Is it the Coalition's position that voters will not know
7 if their ballot was cast as counted -- voters in North Carolina
8 who use ES&S ballot-marking devices?

9 **A.** To be clear, not all voters -- in fact, the majority of
10 voters in North Carolina do not use ballot-marking devices. My
11 particular county, Mecklenburg County, does. So yes.

12 **Q.** And they use ES&S, not Dominion?

13 **A.** That is correct.

14 **Q.** Okay. So the point is it is not just Dominion machines?
15 It is ballot-marking devices in general?

16 MR. CROSS: Objection. Vague. What is the it?

17 MR. BELINFANTE: Prevent voters from having
18 confidence that their vote was cast as counted or counted as
19 cast. Excuse me.

20 THE COURT: Well, let me just ask you. Could you
21 clarify? I mean, not all -- not all of them have scanners.
22 You can rely on a QR code. I don't know the -- maybe this is
23 the only one that uses a QR code. But at least provide some
24 differentiation. We have a particular system here. And maybe
25 she does object universally without regard to that. But I

1 think some refinement is necessary.

2 Is it all -- is it all systems, whatever -- if it is
3 a BMD system regardless of the scanner, you oppose it, or is --

4 THE WITNESS: Generally anytime that the voter is
5 required to select on a touch screen, having a touch screen
6 between the voter and her ballot, we would object to.

7 THE COURT: Okay.

8 BY MR. BELINFANTE:

9 Q. Ms. Marks, you -- using your -- you have a Coalition for
10 Good Governance email marilyn@uscgg.org?

11 THE COURT: I don't think you dealt with the first
12 page of this, which is about a whole other political fight. So
13 if you want to get this exhibit in, 194, I am not sure it is
14 necessary because you've asked her about this. But then you
15 just get the second page put in.

16 MR. BELINFANTE: Your Honor, I may be coming back to
17 it for some of the other issues. But you're right, for this
18 purpose, and if the Court wants to admit conditionally --

19 THE COURT: I don't want to admit, but I'll
20 conditionally admit the second page.

21 MR. BELINFANTE: That's what I mean.

22 BY MR. BELINFANTE:

23 Q. Do you recall you, in 2019, urged the Mecklenburg County
24 Board of Elections not to adopt an ES&S BMD; is that right?

25 A. Yes. I did on behalf of Coalition for Good Governance,

1 yes.

2 Q. Okay.

3 MR. BELINFANTE: May I approach, Your Honor?

4 THE COURT: Yes.

5 BY MR. BELINFANTE:

6 Q. I'll show you what is marked as Defendants' Trial
7 Exhibit 174.

8 MR. BELINFANTE: And, Your Honor, I don't have a lot
9 of questions about this particular email. I'm going to go to
10 one thing in particular.

11 BY MR. BELINFANTE:

12 Q. Is this an email that you sent to the Mecklenburg Board of
13 Elections expressing your -- or the Coalition's opposition to
14 adopting the ES&S BMDs?

15 A. Yes, it appears to be.

16 Q. Okay. And it is a true and accurate copy of that email?

17 A. I will assume that it is, yes.

18 Q. All right.

19 MR. BELINFANTE: Your Honor, I would move to admit
20 Defendants' Trial Exhibit 174.

21 MR. BROWN: No objection.

22 THE COURT: All right. It is admitted.

23 BY MR. BELINFANTE:

24 Q. All right. Ms. Marks, on point three on that first page,
25 you cite to an article and describe it as the nation's top

1 auditing and cybersecurity experts agree Express election
2 results cannot be meaningfully audited.

3 Do you see that?

4 **A.** Yes.

5 **Q.** Okay. Do you recall if the article that is cited to is
6 one by Dr. Appel, Dr. DeMillo, and Dr. Stark?

7 **A.** It probably is. It would be Dr. DeMillo.

8 **Q.** DeMillo. Thank you.

9 And you have read that article; right?

10 **A.** I have.

11 **Q.** Okay.

12 MR. BELINFANTE: Can we get 1287?

13 May I approach, Your Honor?

14 THE COURT: Yes.

15 BY MR. BELINFANTE:

16 **Q.** Ms. Marks, is this the article by Drs. Appel, DeMillo, and
17 Stark that you believe your email referenced?

18 **A.** It appears to be, yes.

19 **Q.** Okay. True and accurate copy of that article?

20 **A.** I believe it would be.

21 **Q.** Okay. Let's turn --

22 THE COURT: Well, Your Honor, at this point I would
23 move to enter into evidence Defendants' Trial Exhibit 1287.

24 MR. BROWN: No objection.

25 THE COURT: It is admitted.

1 MR. BELINFANTE: Thank you.

2 BY MR. BELINFANTE:

3 Q. Let's turn to Page 4.

4 Under examples, the professors write the only known
5 practical technology for contestable, strongly defensible
6 voting is a system of hand-marked paper ballots kept
7 demonstrably physically secure, counted by machines, audited
8 manually, and recountable by hand.

9 Do you agree with that?

10 A. I do.

11 Q. Okay. And that is the Coalition -- the Coalition agrees
12 with that statement; is that right?

13 A. Yes.

14 Q. Okay. So the Coalition does not have a problem with the
15 use of scanners in elections; is that fair?

16 A. We recommend scanners but certainly with the caveat that
17 they need to be audited in order to verify the election
18 outcomes because scanners can certainly be misprogrammed or
19 have malware as well.

20 Q. Okay. If you could turn to Page 6.

21 At the top there, the first complete sentence reads,
22 therefore, BMDs should not be used by voters who are able to
23 mark an optical scan ballot with a pen.

24 Do you see that?

25 A. Yes.

1 Q. Does the Coalition agree with that statement?

2 A. Generally, yes.

3 Q. Okay. So the issue for the Coalition is that BMDs in and
4 of themselves -- or is the issue for the Coalition that the
5 issue of BMDs in and of themselves contains such risks that
6 they are unconstitutional?

7 MR. BROWN: Object, Your Honor. Calls for legal
8 conclusion and is an incomplete question.

9 THE COURT: Sustained but on -- going back to the
10 question of interrogating the witness about constitutionality
11 and legal principles.

12 MR. BELINFANTE: Okay.

13 BY MR. BELINFANTE:

14 Q. Is the Coalition's position that the use of the BMD
15 technology itself is so inherently risky that a voter will
16 never know if their vote was counted as cast?

17 MR. BROWN: Asked and answered, Your Honor.

18 MR. CROSS: And vague.

19 Is the question is that their position in this case
20 or more broadly?

21 THE COURT: Just try again.

22 MR. BELINFANTE: Well, I'll come back and see if the
23 witness can articulate what they are suing for.

24 THE COURT: Okay.

25 MR. BELINFANTE: All right.

1 BY MR. BELINFANTE:

2 Q. All right. Let's go back to the Coalition's first
3 supplemental complaint, Defendants' 1263, specifically Page 58,
4 Paragraph 204.

5 And before I ask you any questions about that in
6 particular, do you agree with me that absentee ballots in
7 Georgia are hand-marked paper ballots?

8 A. No, I do not agree.

9 Q. Okay. How is an absentee ballot not a hand-marked paper
10 ballot?

11 A. Absentee in-person voting is forced to be on BMDs.

12 Q. Okay. I think we're just using different phrases.

13 A. Yes. I thought you asked me about absentee ballots.

14 Q. Sure. I think I would call what you described in-person
15 early voting or advanced voting. I'm talking about the
16 absentee ballot that one can receive in the mail.

17 A. By mail.

18 Q. Yes. Those --

19 A. I just wanted to make the distinction because the law
20 uses --

21 Q. Sure.

22 A. Okay.

23 Q. That's fine.

24 A. Now, do you mind asking me the question again?

25 Q. Not a problem at all.

1 The absentee ballots that a voter can request and receive
2 in the mail, is it the Coalition's position that those are, in
3 fact, hand-marked paper ballots?

4 **A.** Yes, they are.

5 **Q.** Okay. Looking at Page 58 -- and you would agree with me
6 that any voter in Georgia can request and receive a hand-marked
7 paper absentee ballot?

8 **A.** That is their legal right, yes.

9 **Q.** Okay. But the Coalition, in Paragraph 204 of the
10 complaint, cites what it deems as, I guess, issues with voting
11 on a hand-marked paper ballot.

12 The first is postage and transportation costs.

13 Do you see that?

14 **A.** I can't really agree with what you just said though.

15 **Q.** Okay.

16 **A.** All right. Do you mind repeating the question?

17 **Q.** Sure.

18 Is it the Coalition's position that it is a burden on
19 voters who choose to vote with a hand-marked paper absentee
20 ballot to incur postage and transportation costs?

21 **A.** Okay. Now that you defined this as a mail ballot, yes.
22 It can be a burden to have to incur the postage costs or
23 transportation costs to deliver that ballot.

24 **Q.** Okay.

25 **A.** The inconvenience of doing so.

1 Q. Would you agree with me that a voter in Georgia has the
2 ability to return their hand-marked paper absentee ballot to a
3 county election office on election day?

4 A. To return it, yes. But not vote it.

5 Q. Okay. Can a Georgia -- how would a Georgia -- given that
6 distinction, how does a Georgia voter vote a hand-marked paper
7 absentee ballot?

8 A. They are instructed to do so with permanent ink, put it
9 into their secrecy sleeve, put it into the outer envelope, and
10 either drop it in the mail, a drop box, or deliver it to the
11 election office.

12 Q. Okay.

13 A. But to mark it before election day.

14 Q. Okay. A voter could mark it on election day and return it
15 to their county election office in all the sealed stuff as you
16 just described it; correct?

17 A. No.

18 Q. They cannot?

19 A. They cannot.

20 Q. Have you run into a voter that has tried to do that and
21 been prevented from doing so?

22 A. I have not run into a voter who has attempted to do that
23 and been caught, let's say, because it is not in -- it would be
24 difficult to enforce. But I have talked to voters who were
25 concerned about breaking the law by voting their mail ballot on

1 election day and returning it.

2 **Q.** And by voting their ballot on election day -- I mean, if I
3 didn't make this clear, before 7:00 P.M. Having it returned
4 before 7:00 P.M. to the county election office?

5 **A.** We need to break this apart between marking their ballot
6 on election day, which is not permitted under law. They have
7 to mark it before election day. But they may return it on
8 election day.

9 **Q.** Okay.

10 **A.** Okay.

11 **Q.** The last bullet point there says that voters who choose to
12 vote by mail, on the other hand, will incur the risk of their
13 ballot being erroneously rejected without timely notice for
14 cure.

15 Do you see that?

16 **A.** I do.

17 **Q.** Okay. That was filed in 2019. Do you understand or do
18 you have an understanding of whether the State Election Board
19 promulgated a rule to address curing absentee ballots that have
20 been rejected?

21 **A.** I do know that a rule has been adopted. But the risk can
22 still remain.

23 **Q.** Okay. Is it your understanding that Georgia voters who
24 choose to vote with an absentee ballot have time to cure a
25 ballot that has been rejected by a county election office?

1 **A.** It is going to depend on the individual. I know that that
2 is the desired policy, but obviously each voter's situation may
3 differ as to whether they receive timely notice, that sort of
4 thing.

5 **Q.** Okay. Let's look at Page 63 of the Coalition's
6 supplemental complaint, Paragraph 223.

7 THE COURT: Now, Counsel, is there a reason we're
8 working with this one rather than the operative complaint
9 before this Court?

10 MR. BELINFANTE: I was -- I think -- well, I'm using
11 pleadings that have been filed in court by the Coalition to try
12 to understand the scope of what the Coalition alleges is its
13 injury.

14 THE COURT: Well, I understand that. But whatever
15 the scope is, it is as defined in the current complaint, not
16 amended complaint -- I mean -- and this may be identical.
17 So --

18 MR. BELINFANTE: Yeah. And I did want to check with
19 counsel or my co-counsel. It is our understanding that this is
20 the operative complaint for the Coalition.

21 Mr. Brown may correct me.

22 THE COURT: That's fine. If it is, it is.

23 MR. BROWN: That's correct, Your Honor.

24 THE COURT: All right. Fine.

25 I had recalled otherwise, but I guess that is maybe

1 Curling plaintiffs have filed a different complaint.

2 MR. BELINFANTE: The Curling plaintiffs described
3 theirs as a third amended complaint, and the Coalition
4 plaintiffs called it the supplemental complaint.

5 THE COURT: Okay. Thank you.

6 BY MR. BELINFANTE:

7 Q. All right. Paragraph 223 reads at the top, defendants'
8 threatened conduct will severely burden Coalition plaintiffs'
9 fundamental right to vote as described in Paragraphs 99 to 199
10 above, including the following ways.

11 And my question is down at the bottom, that last bullet
12 point which will bleed over into Page 64. It says all voters,
13 including in-person absentee mail voters, will be deprived of
14 the right to participate in a trustworthy and verifiable
15 election process that safely, accurately, and reliably records
16 and counts all votes cast that produces a reliable election
17 result capable of being verified in a -- verified as true in a
18 re-count or election contest.

19 Do you see that?

20 A. I do.

21 Q. Is that still the Coalition's position?

22 A. Yes.

23 Q. Is it the Coalition's position that there cannot be
24 meaningful audits in any election using ballot-marking devices
25 in Georgia -- the Georgia ballot-marking devices?

1 **A.** That is correct assuming that we're talking about the
2 uniform use. The majority use of those ballot-marking devices.

3 THE COURT: What do you mean by the majority?

4 THE WITNESS: As opposed to using them just for
5 accessibility needs.

6 THE COURT: All right.

7 BY MR. BELINFANTE:

8 **Q.** So -- and it is the Coalition's position that the Dominion
9 BMDs are inherently unauditable; is that right?

10 **A.** That is correct.

11 **Q.** Okay. And it is the Coalition's position that Dominion
12 BMD -- the Dominion BMD system is known to have inherent
13 vulnerabilities that place -- that burden the Coalition
14 members' right to vote?

15 **A.** That is correct. I would say vulnerabilities and
16 attributes.

17 **Q.** Okay. And that's why the Coalition, in the first
18 supplemental complaint, asked the Court to find and declare it
19 unconstitutional for any public election in Georgia to be
20 conducted using the Dominion BMD system?

21 That is on Page 69.

22 **A.** I'm sorry. 60 what?

23 **Q.** 69. I'm sorry, Ms. Marks.

24 **A.** Yes.

25 MR. BELINFANTE: I don't know what the Court's

1 preference is, Your Honor. I'm about to go into a different
2 topic. So if you -- I didn't know if you needed to take a
3 break now. I know we have been going -- it's up to you.

4 THE COURT: Do you need a break?

5 THE WITNESS: I'm just fine. Thank you.

6 THE COURT: Let's keep on going.

7 MR. BELINFANTE: Let's proceed then.

8 THE COURT: If you do need one at some point, you let
9 us know.

10 BY MR. BELINFANTE:

11 Q. Ms. Marks, you have been here with us throughout all of
12 this. And you would agree with me that there has been a lot of
13 time spent talking about activity in Coffee County after the
14 November 2020 general election; is that right?

15 A. Yes.

16 Q. Okay.

17 MR. BELINFANTE: Can I get 1274, Carey?

18 BY MR. BELINFANTE:

19 Q. And you're aware that some of the individuals who we've
20 heard testimony about, specifically Cathleen Latham or Cathy
21 Latham, Scott Hall, and Misty Hampton or Misty Hayes were
22 indicted in the Fulton County Superior Court in a case known as
23 Trump, or excuse me, State of Georgia v. Trump?

24 A. Am I aware of that? Yes.

25 Q. Okay. And you were here when one of the witnesses, I

1 believe, described the incidents in Coffee County as one -- and
2 I'm paraphrasing. I don't have the exact language -- one of
3 the most significant breaches of an election security in
4 American history.

5 Do you recall that?

6 **A.** Yes.

7 **Q.** Something to that effect?

8 **A.** Yes.

9 **Q.** Okay. And does the Coalition agree with that assessment?

10 **A.** Absolutely.

11 **Q.** Just -- let's talk about some individuals.

12 At the time of --

13 **A.** May I clarify that statement?

14 **Q.** Yes, of course.

15 **A.** I would say the most -- or certainly one of the most
16 significant breaches of voting system. I'm not sure that you
17 narrowed it to voting system. But --

18 **Q.** That is what I meant.

19 **A.** -- that was what was intended.

20 **Q.** So thank you for helping me with that.

21 Ms. Marks, you -- prior to the indictments in Fulton
22 County, you knew and conversed with Cathy Latham; is that
23 right?

24 **A.** I did.

25 **Q.** Okay. And during that time that you were talking to Cathy

1 Latham, what was her position in Coffee County, if any?

2 MR. BROWN: Object. Vague.

3 BY MR. BELINFANTE:

4 Q. Was Ms. Latham -- she was the Coffee County Republican
5 party chairwoman; is that right?

6 A. During the time that I had any conversations with her,
7 yes.

8 Q. Okay. And you also talked in December -- starting in
9 December of 2020 with Misty Hampton; is that right?

10 A. Maybe you've got something that could refresh my
11 recollection on that. I actually remember more talking to her
12 in 2021 as SB 202, whatever it was then called, legislation was
13 coming up.

14 Q. Okay. That is fine. We'll get to that point later.

15 But Misty Hampton was the election superintendent in
16 Coffee County?

17 A. No.

18 Q. Okay. What was Misty Hampton in November of 2020?

19 A. She was the election supervisor.

20 Q. Supervisor. Okay.

21 And you also talked to, in Coffee County, an individual
22 named Blake or Ed Voyles; is that right?

23 A. Yes, I did.

24 Q. Okay. Sometimes this person is referred to as Blake.
25 Sometimes it is Ed.

1 But it is the same person; right?

2 **A.** Okay.

3 **Q.** And his role in November of 2020 in Coffee County was just
4 as a former election board member; is that right?

5 **A.** His official role was as an election board member.

6 **Q.** Okay. Was he a board member --

7 **A.** Excuse me, a former election board member.

8 **Q.** Yeah. Okay.

9 Were you aware that -- any circumstances surrounding
10 Mr. Voyles' resignation from the Coffee County election board?

11 **A.** Do you mind repeating that question?

12 **Q.** Sure.

13 Do you have any understanding as to why Mr. Voyles
14 resigned from the Coffee County election board in 2018?

15 **A.** He told me there was some type of controversy that I don't
16 really recall right now. It seems like he didn't want to sign
17 some statement that I -- right now I'm just not remembering
18 what that was.

19 **Q.** Okay. Do you -- would it surprise you to learn that he
20 refused to certify the state runoff that saw Secretary
21 Raffensperger elected to the position -- his position as
22 secretary?

23 **A.** I actually did not know that, if that is the case.

24 **Q.** Okay.

25 Ms. Marks, do you recall being interviewed by the Georgia

1 Bureau of Investigations or GBI about the incidents in Coffee
2 County?

3 **A.** I do.

4 **Q.** Okay. Have you seen the redacted notes that the GBI
5 produced in this case?

6 **A.** Could you be more specific?

7 **Q.** Sure. I'll just maybe make it easier.

8 MR. BELINFANTE: May I approach the witness, Your
9 Honor?

10 THE COURT: Have counsel seen this?

11 MR. BELINFANTE: It is the Curling Plaintiffs'
12 Exhibit 372.

13 THE COURT: Okay.

14 MR. BELINFANTE: And I think Mr. Miller is handing
15 them out now.

16 THE COURT: Go ahead.

17 MR. CROSS: This is the entire report?

18 MR. BELINFANTE: This is the entire report.

19 MR. CROSS: What page are you going to, Josh?

20 MR. BELINFANTE: I will be going initially to
21 Page 107, 108 of the PDF. The Bates label is 139002.

22 THE WITNESS: What page did you say?

23 BY MR. BELINFANTE:

24 **Q.** If you look at the bottom -- this is going to be the
25 easiest way to do it, at least that I have done it. It may not

1 be the easiest.

2 Do you see that number FCDA or the numbers on the left
3 bottom corner? It is FCDA.

4 **A.** Uh-huh (affirmative).

5 **Q.** If you could turn to -- excuse me -- Page 139002.

6 If you're going with the middle number, the Curling
7 Plaintiffs' Exhibit Number, it is Page 107.

8 **A.** Yes. I have that.

9 **Q.** All right.

10 THE COURT: I'm sorry. Which page? I should be
11 looking on the bottom middle?

12 MR. BELINFANTE: Yes, Your Honor. You can either go
13 with the middle number, and it is Page 107 of 392.

14 THE COURT: Okay.

15 BY MR. BELINFANTE:

16 **Q.** You began, it is fair to say, though, communicating with
17 Ms. Hampton, Ms. Latham, and Mr. Voyles after the November 2020
18 general election; is that right?

19 **A.** That's correct.

20 **Q.** Okay.

21 **A.** Although we may have had some blast emails and
22 communications that went to all election directors that would
23 have included Ms. Hampton.

24 **Q.** Yeah. That is fair.

25 But your more limited direct communications, putting those

1 aside, that was in or around November or after the
2 November 2020 election?

3 **A.** After the November 2020 election.

4 **Q.** Okay. And you began talking with her because you became
5 aware of some election --

6 COURT REPORTER: I'm sorry. With the coughing, I
7 didn't hear you. Start again.

8 MR. BELINFANTE: Sure.

9 BY MR. BELINFANTE:

10 **Q.** You began talking to her after you became aware of some
11 election voting concerns in Coffee County; is that right?

12 **A.** You may need to refresh my recollection on that.

13 **Q.** Sure.

14 **A.** It was certainly, I think, well after we became aware of
15 concerns that I began to talk to Misty. And I don't recall
16 that it was because of that reason. But I could be wrong.

17 **Q.** Do you recall reaching out to State Representative Shaw
18 Blackmon to obtain contact information for someone in Coffee
19 County?

20 **A.** I believe I did that, yes.

21 **Q.** Okay. And is it true that Mr. -- or Representative
22 Blackmon, Chairman Blackmon, gave you the name of Eric Chaney?

23 **A.** Probably so. I don't have the specific recollection. But
24 that sounds right.

25 **Q.** Sure. And if you want to, you can look at Page 108 of

1 this document.

2 **A.** 108, okay.

3 **Q.** It is just the next page from where we were.

4 **A.** Yes.

5 **Q.** And there the GBI notes indicate Marks reached out to Shaw
6 Blackmon to receive contact information for someone down in
7 Coffee County. Blackmon provided Marks with contact
8 information for Coffee County election board member Eric
9 Chaney.

10 Do you see that?

11 **A.** I do see that. But I need to note that I've gone back and
12 read their notes of this interview with me, and there are a
13 number of inaccuracies.

14 **Q.** Okay.

15 **A.** And I doubt I would have told them that I remembered this
16 specifically. I would have probably told them that that would
17 be generally where -- how I might have gotten that information.

18 **Q.** That's fair.

19 But you seem -- and I think you just answered this. You
20 have seen these investigative notes before?

21 **A.** I have.

22 **Q.** Okay.

23 MR. BELINFANTE: Your Honor, at this point, we would
24 move to enter into evidence what is stamped as Curling
25 Plaintiffs' Exhibit 372.

1 MR. BROWN: Give us a minute, Your Honor.

2 **(There was a brief pause in the proceedings.)**

3 MR. CROSS: Your Honor, given the length of this
4 document, could we have -- let Mr. Belinfante go and we'll get
5 back to the Court after a break on whether we object? Is
6 that -- if we have --

7 THE COURT: Let him go, meaning move on --

8 MR. CROSS: Let him keep moving on. He can use the
9 document. But whether it actually goes into evidence, we would
10 like to talk further. If we have to state an objection now, we
11 will object on hearsay, relevance, and other grounds. Because
12 the whole document is a massive amount of hearsay.

13 MR. BELINFANTE: And, Your Honor, it is the Curling
14 plaintiffs' exhibit. And I was trying to avoid this from at
15 least the Curling plaintiffs.

16 But also, you know, I don't have a problem putting in
17 just the portions I may ask Ms. Marks about. I was concerned
18 about the rule of completeness. And that is why --

19 THE COURT: Well, I can't imagine everything needs to
20 be in here.

21 MR. CROSS: Yeah. That's why -- Josh, why don't you
22 go ahead and then whatever you use we can figure out whether
23 that goes in and whether we think more goes in and we can talk
24 about it. Does that work?

25 MR. BELINFANTE: Okay. That's fine.

1 THE COURT: All right.

2 BY MR. BELINFANTE:

3 Q. Ms. Marks, if you can look to -- at the bottom, that
4 Page 108 of 392.

5 A. Yes.

6 Q. Just to complete the chain here, Mr. Voyles is the one
7 that introduced you to Cathy Latham.

8 Do you see where that is at least in the notes?

9 A. I'm looking.

10 Q. First paragraph, last sentence.

11 A. Yes.

12 Q. Okay.

13 THE COURT: Is that true or not is what he's asked
14 you, not whether --

15 THE WITNESS: I believe it is true that Mr. Voyles
16 introduced me to Ms. Latham.

17 THE COURT: All right. Because if he's asking you
18 about a statement that you think is at least not your words or
19 not true, you have to say so.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: I mean, you've already flagged this.
22 That is why I am just --

23 THE WITNESS: Yes. There are a number of
24 misstatements in here.

25 THE COURT: All right.

1 BY MR. BELINFANTE:

2 Q. Did you happen to attend the Coffee County Board of
3 Elections meeting on November 10, 2020?

4 A. No.

5 Q. Okay. Have you ever read the minutes from that meeting?

6 Well, let me ask it this way. At the time between your
7 introduction to Mr. Voyles through, let's say, February 1 of
8 2021, had you read the minutes of the Coffee County Board of
9 Elections & Registration meeting from November 10, 2020?

10 A. I don't recall doing so.

11 Q. Okay. The GBI notes -- and, again, I'm looking at
12 Page 107 -- the bottom of the page says during the ongoing
13 lawsuit, meaning this lawsuit, Marks became aware of some
14 election voting concerns that occurred in the 2020 presidential
15 election down in Coffee County, Georgia.

16 Do you see that?

17 A. Yes.

18 Q. During the period of time between the general election in
19 2020 and December 16, do you recall what those voting concerns
20 were in Coffee County?

21 A. I was aware of a number of public debates, if you will --
22 that is probably not quite the right word -- of issues that
23 kept raising Coffee County in legislative hearings, court
24 filings, that sort of thing, particularly the legislative
25 hearings.

1 I began to hear what sounded like outrageously, overblown
2 allegations about the operation of the Dominion voting system
3 in Coffee County.

4 **Q.** What were those, as you just described them, outrageously
5 overblown accusations?

6 Go ahead, Ms. Marks.

7 **A.** That's all right. There was testimony in the legislative
8 hearings that the scanners wouldn't work in the re-count, that
9 they were not getting any -- they were not getting the same
10 totals as they had in the original machine count. They seemed
11 not to be able to be specific.

12 And I don't remember quite all of the complaints that I
13 heard Ms. Latham and Eric Chaney enter into the record in the
14 legislative hearings that they were parts of, but it didn't at
15 all sound logical. And that is why I ultimately reached out to
16 them to try to figure out what they were talking about.

17 **Q.** Okay. Do you --

18 **MR. CROSS:** Your Honor, could we just get the
19 relevance of this line of questioning?

20 **MR. BELINFANTE:** Well, Your Honor, we have previously
21 said that Coffee County is not relevant. But given that --

22 **MR. CROSS:** This doesn't concern the breaches.

23 **MR. BELINFANTE:** I'm getting there.

24 Given that we -- well, and I think in fairness, Your
25 Honor, this is probably another time that I would ask the

1 witness to step out.

2 MR. CROSS: Oh, come on.

3 THE COURT: All right. Would you step out for a
4 moment.

5 **(The witness exited the courtroom.)**

6 THE COURT: If you need to use the restroom, it is a
7 good opportunity.

8 Let's finish this, and then everyone can use it,
9 because we're not going to break until 12:30 or thereabouts.

10 MR. BELINFANTE: Your Honor, why we think the
11 evidence is relevant is that Ms. Marks was aware that there
12 were concerns in Coffee County about the Dominion voting
13 equipment. She was communicating with individuals before
14 SullivanStrickler entered the building about the Dominion
15 equipment and talking about things the county should do about
16 the Dominion equipment.

17 As the Court is well aware, Ms. Marks received a call
18 from Scott Hall in March of 2021 indicating that he had
19 breached not only the Coalition's information -- and again,
20 this is Mr. Hall's statements -- but also informing her that
21 they had full access to the Coffee County machinery.

22 So this is laying the groundwork that Ms. Marks went
23 into Coffee County knowing what the allegations were about the
24 machinery, which speaks to whether or not she deemed Mr. Hall's
25 call to her to be relevant -- or excuse me, reasonable and her

1 decision not to inform any state officials or federal officials
2 or law enforcement or otherwise about what has happened, which
3 we think is directly relevant to the extent that Coffee County
4 is relevant at all, given the testimony that if the State knew
5 what Ms. Marks knew in March of 2021, it would have acted
6 differently and it would have acted more quickly.

7 MR. BROWN: Your Honor, we think that is
8 fundamentally irrelevant. The evidence shows that when the
9 State found out about the Hall recording, they still did
10 nothing. And that is what most of this trial has been about,
11 is about their complete inactivity.

12 So among other things, their failure to take any
13 action after they learned of the Hall -- the Hall recording
14 severs any causal connection that would make this even arguably
15 relevant.

16 Second is that just generally the idea that their
17 investigation or the progress of their investigation or them
18 complying with their duties under State law to keep the
19 election safe is somehow excused by some comparison to
20 Ms. Marks and the Coalition and the Curling plaintiffs' action
21 is way too remote to be anything other than a waste of time.

22 The efforts that Ms. Marks and the Coalition
23 plaintiffs and the Curling plaintiffs may very well be relevant
24 to our attorneys' fees claim and our efforts in this
25 litigation. But litigation efforts are not relevant to the

1 State's separate legal duty to keep citizens safe.

2 And this is not about -- they are trying to -- it is
3 obvious, right. They are trying to divert attention from their
4 own neglect to attack Ms. Marks who was doing what any good
5 citizen should do, and that is try to track down information
6 about violations to the State's election security system.

7 And they are trying to villainize her rather than
8 confronting the obvious failures of them to do their job.

9 In addition -- and we'll get into this with -- this
10 particular question doesn't get into it. But we will later --
11 is that this is going to be right on top of attorney-client
12 communications and work product.

13 Thank you, Your Honor.

14 MR. CROSS: Your Honor, if I could just add a couple
15 of quick points. It is not our position that the Hall call
16 standing alone should have spurred something. We have been
17 through this, and I won't walk through all the evidence, but
18 there is a lot that was known to the State in 2021 that was not
19 known to Ms. Marks, who is also not law enforcement. Right?
20 Like the Cyber Ninjas card.

21 THE COURT: Speak up. Thank you.

22 MR. CROSS: Like the Cyber Ninjas card, the EMS
23 server not working.

24 And so when Mr. Belinfante says our position is that
25 the Hall phone call, if known to them earlier, should have

1 spurred action, it is one piece out of a whole lot of stuff.
2 And so that is not actually our position.

3 The last two points, Your Honor, it is not clear if
4 there is a suggestion being made that Ms. Marks was somehow
5 involved or knew about the breaches. If that is where they are
6 going, the Hall call makes clear that she didn't. Because if
7 she knew, Mr. Hall doesn't call her and tell her here is what
8 we did.

9 And lastly, Your Honor -- well, I'll just leave it at
10 those points. Thank you.

11 MR. BELINFANTE: Your Honor has written in the
12 summary judgment motion that the State's reaction to Coffee
13 County was delayed. You've heard testimony from at least three
14 or four witnesses that had they known what Ms. Marks knew they
15 could have taken action sooner.

16 And for Mr. Brown to say to the Court that it is
17 irrelevant because the State is supposed to predict what is
18 going on only walks him into another problem. If Ms. Marks'
19 testimony -- and I don't know what her testimony is going to
20 be.

21 If Ms. Marks' testimony is what Scott Hall said was
22 so unreasonable, nobody would believe it. Well, then that
23 would certainly apply or at least as a question of fact to what
24 the State did.

25 But I want to address something that Mr. Brown

1 brought up because I am going to ask about it because it is in
2 the GBI notes. Marks' lawyers advised her that until they
3 could prove that it happened, they would need to sit on the
4 information provided by Hall. That goes to numerous problems.

5 Remember, we had Ryan Germany sitting up here talking
6 about discovery responses for almost an hour. There are
7 defenses available to the State for the intentional hiding of
8 information. We believe -- and I'm not trying to bring in
9 Ms. Marks as a co-conspirator or anything in Fulton County.

10 But if the plaintiffs are going to say that the
11 incidents in Coffee County, the criminal incidents, are not
12 only relevant but determinative, Your Honor has to take into
13 account what the plaintiffs knew at the time they did it.

14 It is also directly relevant to the argument implied
15 at least by the Curling Plaintiffs that Mr. Germany's discovery
16 answers were incomplete. At the time those were asked, they
17 knew because they had Scott Hall's call. They didn't tell the
18 State. They didn't tell the GBI or the FBI. They sprung it on
19 Gabe Sterling in a deposition.

20 They can't argue that the State was ineffective if
21 the State took the position Mr. Hall was not credible, if that
22 is the position Ms. Marks took.

23 And by the same token, they can't argue that the
24 State's response was ineffective if they didn't know what
25 Ms. Hall knew.

1 Now, Ms. Hall to the point --

2 THE COURT: Ms. Hall? Who is Ms. Hall?

3 MR. BELINFANTE: I'm sorry. Ms. Marks, I'm sorry.

4 To the point about the Cyber Ninja card, I think that
5 is very fine for them to ask on direct. But to me that is a
6 one and one makes two. If Ms. Hall -- or sorry. If Ms. Marks
7 knew about the Cyber Ninja call, maybe that would have -- or
8 card, maybe that would have caused her to notify law
9 enforcement instead of sitting on the information.

10 If the State knew -- and the State has told you if it
11 knew what Ms. Marks knew, its investigation and speed would
12 have been different. That is highly relevant to the case to
13 the extent, and only to the extent, that Coffee County is
14 relevant at all.

15 MR. BROWN: Your Honor, there's many factual
16 assertions that are made in there that Coffee County was
17 sitting on information. I don't -- I mean, that the Coalition
18 was sitting on information. But that is not the Coalition's
19 duty.

20 And he is trying to make the point that the State
21 ought to be measured by what the Coalition did in this
22 litigation. It is way too many -- way too far away from being
23 relevant.

24 THE COURT: All right. I understand the arguments.
25 But now I have lost where we -- how do we -- did you have an

1 evidentiary objection?

2 MR. CROSS: I did, Your Honor.

3 MR. BROWN: Yeah. The specific objection, because we
4 were getting into this, they were talking about Ms. Marks'
5 knowledge of the Coffee County problems that were unrelated to
6 the big problems with SullivanStrickler, that Misty Hampton had
7 with the certification of the results and the scanner, an
8 entirely different issue from what became the SullivanStrickler
9 episode.

10 THE COURT: That is what you were objecting to?

11 MR. BROWN: That is what we were objecting to. That
12 doesn't have anything to do even with his theory.

13 MR. CROSS: I do not have any objection to questions
14 about the relevant portions of the call with Scott Hall. But
15 we are very far afield from that. We have not heard an
16 argument on what -- the questions we were getting, how that was
17 relevant.

18 On the Hall call, the only thing I will say is, one,
19 I'm not aware of any witness -- and I would invite
20 Mr. Belinfante to point us to a single witness who has
21 testified on behalf of the plaintiffs or under questioning of
22 the plaintiffs that the State -- if the State knew about the
23 Hall call or what was disclosed in that call, then that would
24 have prompted them to do some bigger investigation.

25 We haven't even talked about the Hall call. The only

1 people who have brought it up in this entire trial is the
2 State. Our whole position has been based on what we know they
3 knew in 2021 they should have done a deeper investigation. And
4 that doesn't seem to be disputed. Gabe Sterling has
5 acknowledged they should have done more.

6 MR. BELINFANTE: That's not accurate.

7 MR. CROSS: That's in evidence. That's in evidence.

8 THE COURT: You can all dispute that. But --

9 MR. CROSS: I can show it to you.

10 THE COURT: It clearly is in dispute. I'm not going
11 to resolve that right now. I'm just trying to figure out
12 what -- what at this juncture -- because we've gone all over
13 the map when you've said let's -- there was a narrower question
14 in front of me.

15 So what was the objection, and what was the question
16 that was an objection to?

17 MR. CROSS: The question was about something
18 completely unrelated to Scott Hall happening three or
19 four months earlier, and we were objecting to what the
20 relevance of that was.

21 THE COURT: It was something with Misty Hampton and
22 her problems with -- but her problems with certifying the
23 election, if it was that, were part of how she was walking into
24 this situation. And then -- and then Ms. Latham was coming to
25 speak in front of the legislature and then involving

1 Mr. Giuliani and on and on.

2 So, you know, to some extent, it sets the scene. But
3 I don't know that you need to go in it very far.

4 MR. BELINFANTE: Honestly, Your Honor, my intent, the
5 documents I have prior to -- before I will seek to introduce
6 Mr. Hall's call is the letter from Coffee County where they did
7 not certify the election.

8 THE COURT: What is the date of that?

9 MR. BELINFANTE: The date of that is December 4,
10 2020. The Secretary's response on December 9, 2020, which
11 addresses the vote discrepancy issue that Ms. Marks has already
12 testified to.

13 THE COURT: So how is she a witness to be dealing
14 with the State's correspondence with the county?

15 MR. BELINFANTE: They were public documents. And I'm
16 going to ask her if she knew about it. She already testified
17 that she knew there were issues there. So I want to point --
18 ask her if she knew how the State investigated and addressed
19 them.

20 It is setting the stage for Coffee County, which
21 speaks to the reasonableness of the decision and the relevance
22 of the decision. And if Ms. Marks takes the position that what
23 Scott Hall did is unbelievable or not credible, you have to
24 know what is going on in Coffee County at the time. You can't
25 just look at it in a vacuum.

1 THE COURT: Well, provide me with the exhibits. Are
2 you objecting to the exhibits or not before I --

3 MR. BROWN: I haven't seen the exhibits.

4 MR. BELINFANTE: I haven't gotten there yet.

5 THE COURT: Show them the exhibits.

6 MR. CROSS: We know what they are, Your Honor.

7 THE COURT: And are you objecting to their
8 introduction? I mean, I'm not sure she can -- you can
9 introduce them through her. That is -- they are not her --
10 just because they are a public document, you would --

11 MR. BELINFANTE: That's correct.

12 If she doesn't know about them, I won't introduce
13 them through her. But she testified that she knew about
14 discrepancies in Coffee County, so I'm able to ask her if these
15 documents reflect what she had heard about.

16 It also shows that when the Secretary knows of an
17 issue, the Secretary investigated it. The letter from Coffee
18 County is December 4. The response from the Secretary is
19 December 9.

20 MR. BROWN: He's --

21 MR. CROSS: He's building his own --

22 MR. BROWN: I mean, this a collateral issue, Your
23 Honor. I mean --

24 THE COURT: All right. Let me see the exhibits, and
25 then let's take a break, and I will consider it all. All

1 right?

2 MR. BELINFANTE: Yes, Your Honor. Let me see the
3 exhibits then.

4 THE COURT: Are you objecting to the exhibits, first
5 of all?

6 MR. BROWN: I haven't seen them.

7 MR. CROSS: Your Honor, we are, with this witness.

8 THE COURT: You have them now. I'm not going to
9 leave here until actually Mr. Brown says he has seen them.

10 And also, Mr. Oles, do you want to go over and see
11 them?

12 **(There was a brief pause in the proceedings.)**

13 MR. CROSS: I mean, Your Honor, a couple of points.
14 One, we do have an agreement that documents don't have to be
15 disclosed in advance with an adverse witness unless -- or if
16 those documents you had reason to believe the witness had seen
17 them before. And this is --

18 MR. BELINFANTE: No. No. No. No. That -- the
19 agreement is --

20 THE COURT: Wait a second. One person at a time.

21 MR. CROSS: Yeah. We were very clear. The deal was,
22 if you have reason to believe the witness has seen it before,
23 you don't need to disclose it.

24 But what the email says -- and we'll hand it to Your
25 Honor -- you can't surprise the witness with a document you

1 have no reason to believe they have ever been seen before.

2 But just putting that issue to the side, she cannot
3 authenticate these documents.

4 And the last point, Your Honor, they are almost done
5 with their entire case. If they wanted to have someone explain
6 the reasonableness of what they did and walk through the GBI
7 report and these documents, they could have put any witness on
8 to do that.

9 Now, maybe Mr. Sterling will do it. But she can't
10 speak to any of this. They are trying to defend a decision
11 that they made --

12 THE COURT: Let him --

13 MR. BELINFANTE: I'm sorry.

14 MR. CROSS: They are trying to defend their conduct,
15 which they are entitled to do. But they are trying to do it
16 with Ms. Marks without having once put one witness on to walk
17 Your Honor through the GBI report and all these documents and
18 say, here is why we did what we did and why we think it was
19 appropriate. That would be perfectly fine to do. But not with
20 her.

21 THE COURT: Mr. Brown, do you have an objection?

22 MR. BROWN: Yes, I do. 1283 is irrelevant. And it
23 shows that, yes, on one occasion the Secretary did respond to a
24 problem quickly. I don't think that --

25 THE COURT: Can you get near a mic -- microphone?

1 MR. BROWN: It shows that in one instance the
2 Secretary, if this is a press report, did respond quickly to a
3 problem. It has nothing to do with the Coffee County breach
4 and does not have anything to do with Ms. Marks and doesn't
5 have anything to do with anything else, I don't think.

6 And in terms of the problems with the re-count, that
7 has already been covered with other witnesses and is
8 cumulative.

9 MR. BELINFANTE: Your Honor, I don't know what
10 Ms. Marks knows and doesn't know. So to object based on she
11 can't say something about a document she may or may not have
12 seen and about facts she may or may not know is premature at
13 best.

14 To my understanding of the agreement between counsel
15 is that if the documents are reasonably publicly available --
16 and all of these documents are available on the internet. I
17 found them. And some of them were marked prior or they were
18 produced, as you can see, from the Latham00057 Bates stamp on
19 one and the other is on the State's website. So that --

20 MR. CROSS: Josh, these are all publicly available?

21 MR. BELINFANTE: Well, one, the Latham, was produced.
22 You see the Bates label.

23 Defendants' Trial Exhibit 1283 is on a website, yes.

24 MR. CROSS: Okay. Well, maybe that is right then.

25 THE COURT: All right. Well, to the extent -- so

1 when you say maybe that is right, are you agreeing that he
2 can -- I know you may object to these, but are you --

3 MR. CROSS: Not on the surprise point, Your Honor.
4 If they are publicly available, then no.

5 THE COURT: Okay. Are you objecting to the -- I
6 think that your co-counsel is still objecting to them on the
7 basis of relevance.

8 MR. BROWN: On the basis of relevance.

9 THE COURT: All right. Well, I will consider all of
10 that.

11 Take a break, and we'll be back.

12 MR. BELINFANTE: How long, Your Honor?

13 THE COURT: Five minutes.

14 COURTROOM SECURITY OFFICER: All rise. Court will be
15 in recess for five minutes.

16 **(A brief break was taken at 11:57 AM.)**

17 THE COURT: Well, let me just say that that was
18 pretty nasty and -- the whole discussion and unfortunate.

19 Doesn't make -- that degree of aggression doesn't
20 make it easier for you to litigate the case, for the public to
21 hear it, or for me to reasonably hear you and make a decision
22 on -- and I know we can move beyond that.

23 But whatever responsibility that Ms. Marks may have
24 for her actions, it really -- that is still not the issue in
25 the case. And you cannot turn it into a circus around that.

1 It is -- the State was -- I do not minimize by any
2 means the extraordinary challenges in front of State officials.
3 But it doesn't help to sort of end up making that into a
4 complete crazy stew. Let me just sort of go back to sort of
5 some core facts.

6 Obviously, the election was creating great tension in
7 November and December and thereafter. And you have on
8 December 4th as you -- Defendants' Trial Exhibit 1293, you have
9 the county writing to the Secretary that they were not
10 certifying the election.

11 Now, nothing that this witness did caused them not to
12 certify the election. And, you know, this is -- and then, of
13 course, on -- on the 9th is -- also is when Misty Hampton
14 posted her video. And I think we dealt with that in the
15 summary judgment order and referenced it. And I think that
16 there are publicly known videos of that. And you-all know
17 that. So, I mean, I'm not making findings of fact here.

18 But it is a reality just as a context for us to be
19 talking about. And she does that. And then also on that same
20 day -- and I will have no idea about which came first. The
21 Secretary of State opens its investigation in the Coffee County
22 Board of Elections. I don't know whether that happened
23 simultaneously or before or after Ms. Hampton's issuing of
24 her -- on the net of her video of alleged mishaps in the
25 operation of the Dominion system in voting.

1 Thereafter, on the 30th of December, as you-all know,
2 the State legislature itself convened to hear a number of
3 witnesses, not the least of which was Ms. -- the name is just
4 going from me -- the Republican chair. I'm sorry.

5 COURT REPORTER: Cathy Latham.

6 THE COURT: Cathy Latham. Ms. Latham, Former Mayor
7 Giuliani, and others.

8 The situation was a stew, in other words, and a very
9 difficult crazy one from the start in December. This is not of
10 this witness' making.

11 And I just say really be careful. This is a citizen
12 activist. She may have misguided objectives from your own
13 perspective and means that you don't like. But it is -- this
14 is not about -- I am concerned that you take care in proceeding
15 still in a way that is fair and reasonable.

16 And I would say, you know, yes, you can have a strong
17 cross-examination about this. But one has to have the
18 perspective still that this didn't come out of the blue in
19 reality and the State had lots -- lots of things were going on
20 in Coffee County and elsewhere. It was what was happening.

21 And the truth is, is that often Ms. Marks was treated
22 as a gadfly not to be believed. But it is not surprising that
23 she -- this is somebody who you can see from her records and
24 everything we have witnessed in the last number of years that
25 she's all over the place. I mean, she's a citizen activist for

1 good, bad, and great and terrible, whatever that means.

2 And she had her ear to the ground, and y'all had -- I
3 don't mean you personally. But people in the Secretary's
4 office had their ear to the ground. They wouldn't be just
5 going forward as they had otherwise.

6 And, in fact, they had their ear to the ground such
7 that they wanted Mr. Sinners -- the Secretary thought it was
8 appropriate to hire Mr. Sinners who -- on February 1st of 2021,
9 who had played a seminal role in President's Trump campaign and
10 who had also gone down to Coffee County and has testified in
11 this Court that he even signed and notarized various statements
12 given by an array of people in Coffee County about the
13 election.

14 So it is not like he wasn't a source of information
15 as well to the Secretary and the people of the State of
16 Georgia. We haven't heard about anything on that count.

17 So, I mean, this could be -- we can just be into
18 Peyton Place. I guess you are all too young to know about
19 Peyton Place. But just, I'm not going there. So, I mean, I'm
20 going to allow you to examine this witness about all these
21 things. You're entitled to do so.

22 It may evoke other witnesses in turn when the
23 plaintiffs do a rebuttal. We can go on and on. But there is
24 plenty of mud to be thrown. So we might as well stop at this
25 point because I have to, in fact, meet with the Marshals'

1 Office at 12:30.

2 So let's all just take a deep breath, including me,
3 and start anew at one -- at 1:00.

4 MR. BROWN: Your Honor, if I may just say one thing
5 about your reflection on the aggression that was manifested in
6 the argument by counsel. And that is we hear that completely.
7 And I just wanted to say that part of our lack of discipline in
8 being too aggressive is the result really of our affection and
9 we know each other so well.

10 So sometimes since we know each other so well and
11 have gotten -- really have gotten along so well in the
12 litigation --

13 THE COURT: And I know you have.

14 MR. BROWN: -- we feel more free to be expressive.

15 THE COURT: All right. I'll take it. I note -- I
16 will accept that. And I appreciate your letting me know. And
17 it is likely true. And you've all said all that to me before.
18 And so to the extent I have been offensive to you because I
19 said you were too aggressive sort of like -- and you said this
20 is part of our routine, our friendship routine, and our
21 opposition routine, I accept it.

22 But -- so strip all that away and just consider the
23 core message. I'm going to decide the case on the merits. And
24 you can examine this witness all you want and with the advocacy
25 that you are very capable of.

1 But bear in mind that if we -- as I said, you go very
2 far on this, it is just going to obviously invoke more on -- in
3 terms of we're going to be here for a lot longer. Because I
4 feel very confident, despite the fact that everyone is used to
5 wrestling with each other here, that these guys are then going
6 to want to start putting more witnesses up in their rebuttal,
7 which that is up to you though. This is your case. And I
8 appreciate that.

9 But don't imply -- I mean, you can imply it. But I
10 can't say that I buy that the State doesn't have its -- that
11 everyone has their own responsibility here. And Ms. Marks by
12 herself is not the defendant or the culpable moving party in
13 all this agenda.

14 All right. Let's take a break.

15 MR. CROSS: Your Honor, one quick logistical thing.
16 We spoke with the State's counsel. We may potentially have two
17 experts, Andrew Appel and Kevin Skoglund, as rebuttal
18 witnesses. I think we're agreed that since they are both
19 expected to be short, if it is okay with Your Honor, we would
20 have them appear by Zoom.

21 THE COURT: That's fine.

22 MR. CROSS: Is that okay, Bryan?

23 MR. TYSON: Yes.

24 Your Honor, our discussion was if that helps keep
25 things moving that would be fine with us.

1 MR. CROSS: Thank you, Your Honor.

2 COURTROOM SECURITY OFFICER: Court will stand in
3 recess.

4 THE COURT: Let's say five after 1:00 now that we're
5 starting late.

6 **(A lunch break was taken.)**

7 THE COURT: We're ready to begin.

8 MR. BELINFANTE: Ready, Your Honor?

9 Okay.

10 BY MR. BELINFANTE:

11 Q. Now, good afternoon, Ms. Marks.

12 A. Good afternoon.

13 Q. We were talking before about December of 2020 --

14 **(There was a brief pause in the proceedings.)**

15 BY MR. BELINFANTE:

16 Q. You recall we were talking before about December of 2020
17 and Coffee County.

18 Do you have any recollection of Coffee County's Board of
19 Elections' decision not to certify the election in December of
20 2020?

21 A. I did not know about that decision until I heard or read
22 about it. I certainly didn't know it in advance.

23 Q. Okay. When did you hear -- roughly when did you hear or
24 read about it?

25 Are we talking contemporaneous to December 2020 or 2023,

1 for example?

2 **A.** No. It would have been sometime in the -- in -- in early
3 December. I think about the time that they made that decision.
4 And then I believe -- I believe that the first that I heard
5 about it was likely when Eric Chaney, the board member, was
6 testifying in a House -- in a House committee hearing.

7 **Q.** Okay. That would have been January 2021?

8 **A.** No, I believe it was in early December. I think it was
9 maybe something like the 8th or the 9th.

10 **Q.** So either way, it was before March of 2021 that you knew
11 Coffee County did not certify the election originally; is that
12 right?

13 **A.** That they did not certify the re-count originally but
14 ultimately did.

15 **Q.** Okay. That is right.

16 MR. BELINFANTE: May I approach, Your Honor?

17 THE COURT: Yes.

18 MR. BELINFANTE: I'm handing the witness a document,
19 what has been premarked as Defendants' Trial Exhibit 1293.

20 I believe I have given a copy to the Court and
21 opposing counsel already.

22 BY MR. BELINFANTE:

23 **Q.** Ms. Marks, have you seen this document before?

24 **A.** I have.

25 **Q.** Okay. What does it appear to be?

1 **A.** It is a letter on the letterhead of the Coffee County
2 Board of Elections & Registration signed by Chairperson
3 Ernestine Thomas-Clark written to Secretary Raffensperger
4 saying that the board cannot certify the electronic re-count
5 numbers.

6 I can go on. But does that identify the document well
7 enough?

8 **Q.** Yes.

9 **A.** Okay.

10 **Q.** I think your counsel will tell me if you've done a
11 sufficient job on that.

12 Does it appear to be a true and accurate copy of the
13 Coffee County Board of Elections letter?

14 **A.** Well, as far as I know.

15 **Q.** Okay.

16 MR. BELINFANTE: Your Honor, I move to enter into
17 evidence Defendants' Trial Exhibit 1293.

18 MR. BROWN: No objection.

19 THE COURT: It is admitted.

20 BY MR. BELINFANTE:

21 **Q.** Ms. Marks, do you see that first sentence where it says
22 the Coffee County Board of Elections & Registration cannot
23 certify the electronic re-count numbers given its inability to
24 repeatably duplicate credible election results. Any system,
25 financial, voting or otherwise, that is not repeatable nor

1 dependable should not be used.

2 Do you see that?

3 **A.** I do see those two sentences.

4 **Q.** And you understand they were talking about the Dominion
5 voting equipment; correct?

6 **A.** I could assume that is what they were talking about, yes.

7 **Q.** And generally you would agree with the Coffee County Board
8 of Election statement that the Dominion voting equipment is not
9 dependable or repeatable; is that fair?

10 And by you, sorry, I mean, is it the Coalition's position
11 that the Dominion voting equipment is not repeatable nor
12 dependable?

13 **A.** I think there are multiple questions in there. You were
14 asking me if I agreed with a statement that the board made
15 about Dominion. I'm not sure that they actually said that in
16 this statement.

17 THE COURT: Did you mean to ask that?

18 MR. BELINFANTE: What I meant to just ask is does
19 she -- does the Coalition contend that the Dominion equipment
20 is not repeatable nor dependable. Just that.

21 THE WITNESS: The Dominion equipment in general we
22 would not -- in general we would not agree with that statement
23 that -- in that general way.

24 BY MR. BELINFANTE:

25 **Q.** Okay. Are you aware of the Secretary's response to Coffee

1 County's decision not to certify the election?

2 **A.** What I am aware of is that the Secretary sent down --
3 started an investigation after Coffee County delayed for many
4 days their attempt to even count the ballots and try to certify
5 the election.

6 I'm aware that the Secretary began an investigation and
7 sent down investigators I believe sometime around the 9th,
8 10th, 11th of December.

9 **Q.** And do you know what the conclusion of the Secretary of
10 State's office was regarding Coffee County's stated allegations
11 that it could not produce credible election results?

12 **A.** I believe that the Secretary concluded that Ms. Hampton
13 had -- don't remember whether it is scanned a batch twice or
14 failed to scan a batch. But there was a simple human error
15 reason that the numbers did not reconcile.

16 MR. BELINFANTE: May I approach the witness, Your
17 Honor?

18 THE COURT: Yes.

19 BY MR. BELINFANTE:

20 **Q.** I want to show you what we marked as Defendant's Trial
21 Exhibit 1283, which I have already given to your counsel and
22 the Court.

23 Ms. Marks, have you seen this document before?

24 **A.** I have.

25 **Q.** What does the document appear to be?

1 **A.** The document is -- appears to be a press release from the
2 Georgia Secretary of State Brad Raffensperger's office dated
3 December the 9th, 2020.

4 MR. BELINFANTE: Your Honor, I would move to enter
5 into evidence Defendants' Trial Exhibit 1283.

6 MR. BROWN: No objection, Your Honor.

7 MR. CROSS: Your Honor, we object to that one.

8 THE COURT: What?

9 MR. CROSS: We object. It is hearsay. And I don't
10 think they should be allowed to back door statements from the
11 Secretary, since he is not here.

12 MR. BELINFANTE: Your Honor, it is a press release
13 from the Secretary's office. It is a public document. There
14 is no question of its authenticity. And Ms. Marks has already
15 testified as to what I'm going to ask questions as it relates
16 to the truth of the matter.

17 THE COURT: Well, it is admitted.

18 MR. BELINFANTE: The Secretary himself is not quoted
19 in this, so ...

20 THE COURT: Yeah. I will admit the document in for
21 purposes -- that it is a press release and for purposes of your
22 telling the story. But there are statements here that are
23 hearsay.

24 MR. BELINFANTE: And, Your Honor --

25 THE COURT: I mean, I'm just simply noting that.

1 MR. BELINFANTE: I understood. I just understood the
2 objection to be it was hearsay of the Secretary, not the
3 statements within.

4 THE COURT: There are a lot of statements. I don't
5 know who they are from, the Secretary or somebody else in the
6 office or their press person. But ...

7 MR. BELINFANTE: Sure.

8 BY MR. BELINFANTE:

9 Q. Ms. Marks, if we could go down to the fifth paragraph
10 where it says right there -- yes, ma'am?

11 A. I think I may have said that this appears to be the press
12 release. My particular copy is cut off I now see and there's
13 some words missing.

14 So at least for my copy I'm not sure I can say that is --

15 Q. Mine is too. We can get that corrected. We'll get that
16 corrected.

17 A. Okay.

18 THE COURT: So is mine.

19 BY MR. BELINFANTE:

20 Q. Let me draw your attention to the part that is not cut off
21 because that is where I am going to ask the question.

22 A. All right.

23 Q. It is this sentence here the Coffee County letter
24 blamed --

25 MR. BELINFANTE: And we will get that corrected, Your

1 Honor.

2 BY MR. BELINFANTE:

3 **Q.** -- the voting system for the 51-vote discrepancy, but
4 Ms. Martin could not specify what machine problems were
5 encountered.

6 Do you see that?

7 **A.** I do.

8 **Q.** Okay. And that is consistent with your recollection that
9 it was human error that caused the problems in Coffee County
10 that led it to not certify the election; is that right?

11 **A.** Well, I didn't make the conclusion that it was human
12 error. But I think that is what the Secretary concluded. And
13 that seemed reasonable based on the facts that I knew then and
14 know now.

15 **Q.** All right.

16 MR. BELINFANTE: Do we have 1210?

17 BY MR. BELINFANTE:

18 **Q.** Ms. Marks, in December of 2020, you continued
19 conversations with Ms. Latham and Mr. Voyles regarding
20 elections; is that right?

21 **A.** That's correct.

22 **Q.** Okay. Do you recall discussing with them strategies about
23 asserting the county's authority as it relates to elections?

24 **A.** Yes.

25 **Q.** Specifically as it relates to re-counts; is that right?

1 **A.** I actually don't recall right now.

2 **Q.** Okay. We'll move on.

3 MR. BELINFANTE: May I approach, Your Honor?

4 THE COURT: Yes.

5 BY MR. BELINFANTE:

6 **Q.** I'll show you what we have marked as Defendants' Trial
7 Exhibit 1210.

8 Ms. Marks, this is an email from your email account?

9 **A.** Yes, it is. It appears to be.

10 **Q.** And at the bottom it indicates that it is -- you identify
11 yourself as the executive director of the Coalition; right?

12 **A.** Yes. Correct.

13 **Q.** And you sent it on December 26 to Cathy Latham and Ed
14 Voyles; is that right?

15 **A.** Correct.

16 **Q.** True and accurate copy of the email?

17 **A.** As far as I can tell sitting here.

18 MR. BELINFANTE: Your Honor, I move to enter into
19 evidence Defendants' Trial Exhibit 1210.

20 MR. BROWN: No objection.

21 THE COURT: Are you -- do you have an objection?

22 MR. CROSS: No, Your Honor. I'm sorry. I'm sorry.

23 BY MR. BELINFANTE:

24 **Q.** All right. And it is at the top that you write one of the
25 best ways to move in the right direction is for county

1 superintendents, boards, or probate judge to begin to take back
2 their considerable authority and exercise local control over
3 elections where permitted by law.

4 Do you see that?

5 **A.** I do.

6 **Q.** Okay. Ms. Marks, can you tell the Court about the first
7 time you met an individual named Scott Hall?

8 I'll leave it at that.

9 **A.** Okay. I think I've actually only met Mr. Hall once. And
10 that was very briefly in the Fulton County hand count audit in
11 November of 2020 at the World Congress Center.

12 **Q.** Okay. And at that time, did he -- did he -- did y'all
13 have a conversation, brief albeit?

14 **A.** Not much of one. He came kind of scurrying up to me as I
15 was an observer, introduced himself, and said I want to talk to
16 you and insisted that I give him my business card or a picture
17 of my business card. I did one or the other and moved on.

18 **Q.** Okay. And he later called you on March 7 of 2021;
19 correct?

20 **A.** That's correct.

21 **Q.** All right. And you recorded at least a portion of that
22 telephone call; is that right?

23 **A.** A portion of that call; correct.

24 **Q.** And by March 7 of 2021, is it your understanding that --
25 sitting here today, that SullivanStrickler had already gained

1 access to the Coffee County election equipment?

2 **A.** Certainly today that is my understanding. It was
3 certainly not at that time.

4 **Q.** Understood. Yeah. Just trying to put it in a timeline.

5 MR. BELINFANTE: Your Honor, at this point -- and
6 we've talked about this with opposing counsel. And I'm not
7 sure which way the Court would like to proceed. I emailed
8 counsel last night a full audio recording of the call. It is
9 about an hour, 22 minutes. I have zero intention of playing
10 the full thing.

11 We also have a --

12 THE COURT: The whole thing? She only recorded part
13 of it. Did you get another part from somebody else?

14 MR. BELINFANTE: We received the full -- so here is
15 the kind of -- the exhibits that are in the pretrial order are
16 the pieces that were used in Mr. Sterling's deposition, which
17 is a clip of the call. We have the whole call.

18 THE COURT: What I'm trying to say is that -- well,
19 let me just say -- there is no point in my saying it. My
20 understanding was that -- is it correct or not correct that
21 when Mr. Hall called you, you were surprised?

22 THE WITNESS: Yes.

23 THE COURT: And did you already have a tape running,
24 or did you add it at some point?

25 THE WITNESS: Okay. To be clear, he had text

1 messed me, I believe, just minutes before.

2 THE COURT: Talk into the --

3 THE WITNESS: I'm so sorry.

4 He had text messed me, reintroduced himself a few
5 minutes before the call, and said he was going to call me.

6 So I wasn't shocked that I picked up the phone and he
7 called. And he called and began threatening me. And after he
8 made threats and said that he had someone hack our litigation
9 files, I scrambled --

10 THE COURT: You mean the Coalition's litigation?

11 THE WITNESS: Yes. The Coalition's litigation files.

12 I scrambled around and found an old -- another
13 telephone, turned it on record and started recording the
14 conversation several minutes into the conversation after I
15 realized I wanted to keep him on the phone and try to draw out
16 of him what I could. And so the first part of the call is not
17 recorded.

18 THE COURT: All right. Thank you.

19 MR. BELINFANTE: Yeah. So, Your Honor, so when I
20 said the whole call, I meant from the time it started recording
21 until the end of the call as it was produced to us by the
22 Coalition.

23 THE COURT: All right.

24 MR. BELINFANTE: So the point is this, I have no
25 intention to play the whole call. I do think for completeness

1 the entirety of the audio file should be admitted into
2 evidence.

3 And so I have tried -- we had some conversations.
4 Like I said, I emailed both the whole version and a transcript
5 that we had made of the call to opposing counsel last night. I
6 am prepared to walk through and play just clips I'm going to
7 ask questions about. But we would move to enter the entirety
8 of the call into the record.

9 THE COURT: Is there any objection to that?

10 MR. BROWN: Yes, Your Honor. We would -- we do not
11 object to the clips. As to the entire audio, I do not believe
12 we have any objection to the entire audio. We have not had an
13 opportunity to review the transcript.

14 Mr. Belinfante, I'm not sure when we got that
15 transcript. But we just physically have not had a chance to
16 review whether it is accurate. And at least on that ground we
17 would object, at this time, to the admission of the transcript.

18 MR. BELINFANTE: Your Honor, I'm sorry, to be clear,
19 I wasn't -- the transcript was on the PTO. But I'm not asking
20 to enter the transcript at this time. Just the full audio
21 file.

22 THE COURT: All right. Well, I have to hear from the
23 Curling plaintiffs.

24 MR. CROSS: I share Mr. Brown's objection on
25 relevance. But we'll defer to the Court on how to handle the

1 audio file. That is the only thing being offered. We have no
2 objection to relevant clips coming in. We do object to the
3 full audio file.

4 THE COURT: I thought he said he didn't object to the
5 full audio. Maybe I misunderstood.

6 MR. BROWN: I didn't object to the --

7 MR. CROSS: Whatever he said I'm good with, on this
8 piece.

9 THE COURT: All right.

10 MR. BELINFANTE: We will submit that electronically.

11 THE COURT: You have objections to the
12 transcription --

13 MR. CROSS: The transcript we have an objection to,
14 but we're not there.

15 THE COURT: We're going to hold off -- I don't think
16 they are admitting the transcript. But to the extent you are,
17 then you can deal with that when we're through with the trial.

18 MR. BELINFANTE: Can we play from the transcript
19 audio -- excuse me, from the audio minute 4, 11 to 4, 51?

20 **(The audiotaped recording was played.)**

21 BY MR. BELINFANTE:

22 **Q.** Ms. Marks, is that Mr. Hall's voice?

23 **A.** Sounds like it.

24 **Q.** Okay. Who is Dominic, if you recall?

25 **A.** I think he was talking about Dominic Olomo, who was either

1 the Dominion tech at that time or perhaps had been hired by
2 Fulton County to run a portion of the voting system in the
3 Fulton County elections.

4 **Q.** Okay. And shortly after he asks you for the depositions,
5 isn't it true that you became concerned that Mr. Hall either
6 directly or indirectly had hacked into the Coalition's
7 litigation files?

8 **A.** I believe that he started his conversation -- that is why
9 I began recording it, is because he started his conversation
10 after a bit of letting me know that he was kind of a tough guy
11 and usually got what he wanted. He -- he said that he had
12 hacked into -- or he had had someone hack into CGG's litigation
13 files. And so it was in -- early in the conversation that I
14 had said that.

15 **Q.** All right.

16 **A.** Or determined that that may be a possibility.

17 MR. BELINFANTE: Mr. Montgomery, can we play the
18 audio clip from minute 6, 12 to 6, 36?

19 **(The audiotaped recording was played.)**

20 BY MR. BELINFANTE:

21 **Q.** Were you -- did you at that point form an opinion as to
22 whether Mr. Hall had actually gotten into the Coalition's
23 litigation files?

24 **A.** No. But I had to consider that a possibility. And I
25 had -- what I recall now is that I was purposely repeating.

1 Because I knew I was recording it, I was purposely repeating
2 his allegation that he had hacked in or had somebody hack in.
3 So that is why I was repeating it back.

4 Of course I didn't know the truth or not. But I was
5 willing to take it seriously.

6 **Q.** And part of what led to your concern was that the
7 deposition he was citing, at least at the time of the call, you
8 believed was not made public; is that right?

9 **A.** I thought that was probably correct.

10 **Q.** Okay. And the significance of that is that he could not
11 just go on to the PACER website or something else and obtain
12 the deposition?

13 **A.** That's correct.

14 **Q.** Okay. Now, he goes on to notify you that a team that went
15 up to Michigan went to Coffee County and scanned the equipment;
16 is that right?

17 **A.** That's correct.

18 **Q.** Okay.

19 MR. BELINFANTE: Mr. Montgomery, could we play the
20 tape from a minute, 55, 55 to 56, 35?

21 **(The audiotaped recording was played.)**

22 BY MR. BELINFANTE:

23 **Q.** Do you know who the team he is referring to that went up
24 to Michigan was on March 7 of 2021?

25 **A.** I do know now or I think I can remember most of their

1 names. I did not know at that time.

2 **Q.** Okay. Were you aware that there was a -- on March 7 of
3 2021, were you aware that a forensic team had gone to Michigan
4 and copied election information?

5 **A.** It is hard for me to remember right now whether I knew
6 that team had gone there in March of 2021.

7 **Q.** All right.

8 **A.** It is just hard for me to remember exactly when I learned
9 that.

10 **Q.** Understood.

11 Now, you went and then asked Mr. Hall if he imaged the
12 hard drives; is that right?

13 **A.** I thought he told me that he imaged the hard drives and
14 that I repeated it back to him as sort of incredulous that he
15 did such a thing.

16 **Q.** Right. Because it was your understanding that third
17 parties could not image election equipment without the
18 authority or permission of the State Election Board or
19 Secretary of State; is that right?

20 **A.** Correct.

21 **Q.** And you had that understanding on March 7 of 2021; isn't
22 that right?

23 **A.** Uh-huh (affirmative).

24 MR. BELINFANTE: Let's play, Mr. Montgomery, if we
25 could, the portion that is a minute, 56, 35, through 57, 14.

1 **(The audiotaped recording was played.)**

2 BY MR. BELINFANTE:

3 **Q.** At the time you heard that from Mr. Hall, Ms. Marks, did
4 you believe what he was saying was credible?

5 **A.** Not really, as you could hear the surprise in my voice.

6 **Q.** But you did, at the time, believe it was concerning,
7 nonetheless?

8 **A.** If what he was saying was true, certainly it would be
9 concerning.

10 **Q.** All right. And after the call, you did not contact the
11 Secretary of State's office and inform the Secretary of that
12 call; is that right?

13 **A.** Not immediately.

14 **Q.** Correct. And in March of 2021, you didn't contact the
15 GBI?

16 **A.** No.

17 **Q.** Or the FBI?

18 **A.** No.

19 **Q.** Or the Coffee County police department or sheriff's
20 office?

21 **A.** No.

22 **Q.** In fact, whether it was before or after your attorneys --
23 I don't need to know -- one person you contacted the next day
24 was Ed Voyles; isn't that right?

25 **A.** I don't remember if it was the next day. But probably

1 shortly after.

2 **Q.** Okay. And why did you contact Ed Voyles?

3 **A.** I don't recall right now exactly what I would have said to
4 him. I know at some point -- but I don't remember whether it
5 was the next day -- I asked Mr. Voyles if he knew anything
6 about this allegation.

7 **Q.** Okay. And he didn't answer you one way or the other, did
8 he?

9 **A.** No, he never did.

10 **Q.** Okay. And later you told the GBI -- or no, let me ask it
11 this way.

12 Later, did you tell the GBI that you believed that the
13 individual with the most to lose and the most willing to
14 cooperate with a criminal investigation would be Mr. Voyles?

15 **A.** That was -- that was what I told them that my speculation
16 was. I certainly didn't have facts --

17 **Q.** Okay.

18 **A.** -- that would prove that.

19 **Q.** I'm not asking -- okay.

20 MR. BELINFANTE: May I approach the witness, Your
21 Honor?

22 THE COURT: Yes.

23 BY MR. BELINFANTE:

24 **Q.** I'm showing you what has been premarked as Defendants'
25 Trial Exhibit 412.

1 Do you recognize this document, Ms. Marks?

2 **A.** Yes.

3 **Q.** Okay. And what is this document?

4 **A.** This looks like a screenshot of text message exchanges
5 between Mr. Voyles and myself.

6 **Q.** All right. Appear to be a true and accurate copy of text
7 messages between you and Mr. Voyles?

8 **A.** As far as I can tell sitting here today.

9 MR. BELINFANTE: Your Honor, we would move to enter
10 into evidence Defendants' Trial Exhibit 412.

11 THE COURT: Any objections?

12 MR. OLES: Judge, I haven't seen it yet.

13 MR. BELINFANTE: Oh. Sorry.

14 MR. CROSS: Could we just get clarity, Josh, whose
15 phone it is? Like who is the blue --

16 COURT REPORTER: I can't hear you.

17 MR. CROSS: I have never seen this. So I'm just
18 trying to understand whose phone is it. Who is the blue?

19 MR. BELINFANTE: Sure.

20 BY MR. BELINFANTE:

21 **Q.** Let me ask this.

22 Ms. Marks, reading this, do you believe that your
23 communications are the blue?

24 **A.** Yes. Or we could maybe say on the right-hand side in case
25 somebody doesn't have a color copy. And Mr. Voyles'

1 communications are on the left-hand side.

2 MR. BROWN: No objection.

3 THE COURT: All right.

4 BY MR. BELINFANTE:

5 Q. So this is your notification to Mr. Voyles. You're asking
6 about -- you tell him, in that second bubble up there, that a
7 guy named Scott Hall called you last night saying that he paid
8 for part or all of an effort that obtained an image of the
9 server and a bunch of other machines in Coffee County and that
10 the full board had approved the imaging of equipment. Do you
11 know if that is true?

12 That's your words?

13 A. Yes.

14 Q. And he really doesn't answer, does he?

15 A. He does not.

16 Q. Okay. At that point, when Mr. Voyles avoided the
17 question, did you contact any government officials about what
18 you had learned in Coffee County?

19 A. I did not contact --

20 Q. And let me -- that was a poorly ended question.

21 At that point, did you contact any government officials
22 about what Mr. Hall had called you about?

23 MR. BROWN: Can you specify what you mean by
24 government officials?

25 MR. BELINFANTE: Sure.

1 MR. BROWN: Does that include county and state and --

2 MR. BELINFANTE: Fair enough.

3 BY MR. BELINFANTE:

4 Q. Let me try one more time, Ms. Marks.

5 On March 8 -- or excuse me, March 9, 2021, after

6 Mr. Voyles doesn't answer your question, did you then reach out

7 to the Secretary of State's office or any state, federal, or

8 county law enforcement to inform them of the call you had with

9 Mr. Hall?

10 A. No.

11 Q. No?

12 A. No.

13 Q. Okay. Ms. Marks, if you could go back to the GBI

14 investigative summary.

15 A. Just a moment.

16 What page?

17 Q. Using the numbers on the bottom, Page 109 of 392.

18 A. Okay.

19 Q. You see in that first paragraph on the third line the

20 sentence that begins Marks. It says Marks went to multiple

21 lawyers of hers and advised them of the information she had

22 received from Hall about the potential computer trespass at

23 Coffee County, Georgia. Marks' lawyers advised her that until

24 they could prove that it happened they would need to sit on the

25 information.

1 Do you see that?

2 **A.** I see that.

3 **Q.** Is that an accurate statement that you gave to the GBI?

4 **A.** I did not give that statement to the GBI.

5 **Q.** Okay.

6 **A.** This is a GBI's inaccurate summary purportedly of what I
7 told them. But I did not make that statement to the GBI.

8 **Q.** What statement did you make?

9 **A.** I talked to them for three and a half hours. So --

10 **Q.** Were you advised not to produce the information?

11 MR. BROWN: Your Honor, that is attorney-client
12 communication.

13 THE COURT: Sustained.

14 I gather they don't take -- they don't have tapes of
15 this?

16 MR. BELINFANTE: I'm not aware of any. We don't
17 represent the GBI. And this -- I think we all got in discovery
18 disputes about that. So ...

19 THE COURT: No. I'm not looking for them. But that
20 is -- my understanding is their practice is not to take
21 audiotapes.

22 MR. BELINFANTE: That may be. I don't know the
23 answer to that.

24 THE WITNESS: Your Honor, may I answer? May I --

25 THE COURT: Sure.

1 THE WITNESS: I believe they did take a tape
2 recording, and I believe it says so in this document.

3 THE COURT: Okay.

4 THE WITNESS: Toward the end, I believe it does.

5 BY MR. BELINFANTE:

6 Q. Are you aware that the first time the Secretary of State's
7 office learned of Mr. Hall's call to you was in the
8 February 2022 deposition of Gabriel Sterling?

9 A. No, I am not aware of that.

10 Q. You watched or you -- I don't know if it was by Zoom or
11 not. But you were either present or there via Zoom during
12 Mr. Sterling's deposition in February of 2022, were you not?

13 A. That is correct.

14 Q. Okay. Did you provide the tape to the State prior to
15 February of 2022?

16 A. No, we did not --

17 Q. I mean, I'm sorry, the recording of your call with
18 Mr. Hall?

19 A. No, we did not do that.

20 Q. Okay. Do you have any reason to believe that the State
21 knew of your call prior of February of 2022 with Mr. Hall?

22 A. Of the call itself, I would have no idea.

23 Q. Did you explain to the Georgia Bureau of Investigation why
24 you did not talk to law enforcement about the call?

25 A. I don't -- I don't remember whether that was a subject

1 that they asked me about.

2 **Q.** Why did you not produce the call to the Secretary's office
3 earlier than February of 2022, given that the call was in March
4 of 2021?

5 **A.** Within hours of getting the call, I shared my concern with
6 my attorneys and shared my concern that this might be just one
7 more bogus allegation. And we concluded that, particularly
8 after I talked to Rick Barron the next day, this may not at all
9 be credible and that discovery would be opening soon and we
10 would attempt to learn more in discovery before we let it have
11 an air of credibility that it may not have deserved.

12 **Q.** Because you recognized, at least in 2021, that there were
13 a lot of allegations about Georgia elections that did lack
14 credibility; correct?

15 **A.** Absolutely.

16 **Q.** Mr. Pulitzer, for example, is one that you believe lacked
17 credibility?

18 **A.** Absolutely.

19 **Q.** Okay. And is it true that after you received or after you
20 had the call that you began questioning anyone you could find
21 out more about the event in Coffee County?

22 And by the event, I mean the SullivanStrickler
23 unauthorized access of the election equipment.

24 MR. BROWN: Object to the form. The way it is framed
25 it sounds like she knew at the time she was seeking additional

1 information exactly what the event was.

2 MR. BELINFANTE: I'll withdraw. I'll rephrase.

3 THE COURT: Yeah.

4 BY MR. BELINFANTE:

5 **Q.** Ms. Marks, is it true that after the call with Mr. Hall,
6 and in a short period of time -- so let's just say March
7 2021 -- you began trying to determine if what Mr. Hall told you
8 on the phone was true?

9 **A.** Began trying to determine -- I don't know that I -- that I
10 undertook some massive effort to like go do open records
11 requests and that sort of thing. But I did have some questions
12 about it and, in fact, reached out and asked some questions
13 about Mr. Hall particularly.

14 **Q.** Who did you reach out to?

15 **A.** The first person I called, just as soon as I hung up the
16 phone that night, was Ms. Jeanne Dufort, who is a Coalition
17 member, and shared with her -- I was primarily focused on my
18 absolute fear that our litigation files had been hacked. And I
19 mainly talked with her about that and just shared with her and
20 get her ideas on that.

21 And then I told her about the kind of wild allegation
22 about this Coffee County imaging of the equipment. And she had
23 heard nothing about that either. And somewhere on that call is
24 where I believe that I came up with the idea of talking to Rick
25 Barron the next day, who was the election manager at Fulton

1 County or election -- excuse me, election supervisor at Fulton
2 County because I could tell that Mr. Hall was quite obsessed
3 with Fulton County.

4 **Q.** Other than Ms. Dufort and Mr. Barron and your counsel, did
5 you reach out to anyone else to try to determine the
6 credibility of Mr. Hall's statements to you on the phone?

7 **A.** I have a hard time exactly placing it in time. But some
8 opportunity presented itself for me to talk to reporters about
9 it. Because as the spring went on, we began to learn more
10 about various actors' attempts to access voting systems across
11 the nation.

12 And I began to ask reporters, could there possibly be any
13 credibility to this Coffee County claim as there was with
14 other -- with other states?

15 **Q.** At the time, though, that -- in February of 2022 during
16 Mr. Sterling's deposition, you didn't have the security camera
17 footage?

18 **A.** That is correct. We did not.

19 **Q.** Okay. So the only information you still had in February
20 of 2022 was the phone call from Mr. Hall; is that right?

21 **A.** No, that wouldn't be correct.

22 **Q.** Okay. What additional information had you gained between
23 the March 7 call and the February 2022 deposition of
24 Mr. Sterling?

25 **A.** You are phrasing the question a little more narrowly. But

1 over the course of November, December, January and into the
2 spring --

3 THE COURT: Of '22?

4 THE WITNESS: -- of 2021. Yes. Of 2020 to 2021,
5 there were various things that bubbled up about Coffee County
6 in lawsuits and in public discussions that continued to build
7 my curiosity about Coffee. Everything from, you know, the
8 lawsuits that began in November of 2020 and, you know, carried
9 through that we were all hearing about.

10 So the information about Coffee more generally was
11 not limited to just the hour's worth of phone call.

12 BY MR. BELINFANTE:

13 Q. Okay. But given that new information, you still did not
14 contact the Secretary of State's office and provide --

15 MR. BROWN: Object. Mischaracterizes her testimony.
16 She was talking about prior information that she had about
17 Coffee County generally, not just about --

18 MR. BELINFANTE: I will rephrase.

19 BY MR. BELINFANTE:

20 Q. Given the information you just described, you still did
21 not contact the Secretary of State's office with the
22 information gained from or with the knowledge of the Scott Hall
23 recordings; is that right?

24 THE COURT: She has already asked and answered that.
25 So -- and you've asked her about -- she's talked -- you have

1 asked her about other things. She's talked to you about that
2 there was litigation. You are aware of that litigation. He
3 was -- so I don't know what more you're asking for.

4 MR. BELINFANTE: Okay.

5 BY MR. BELINFANTE:

6 Q. You did continue to talk to Cathy Latham after you talked
7 to Scott Hall; correct?

8 A. I did.

9 Q. Did you ever ask her about the allegations that Scott Hall
10 made?

11 A. I may have. Right now I just -- it is not clear in my
12 mind.

13 Q. How about Mr. Voyles? Did you ask him again after the
14 text message we saw in Defendants' Exhibit 412?

15 A. What I recall is that sometime after it was more or less
16 confirmed and there had been press articles about it, I believe
17 I reached out to him again and said, hey, look Coffee County is
18 in the news. Paraphrasing something like, do you know anything
19 about this?

20 I am totally paraphrasing now, and it has been quite a
21 while.

22 But I reached out to him after some long period of time of
23 not communicating with him and asked him.

24 Q. Okay. And that would have been after Mr. Sterling's
25 deposition in February of 2022?

1 **A.** Yes.

2 **Q.** Okay. You attended either virtually or in person the
3 deposition of Willard Stone, a Coffee County Board of Elections
4 member, on September 1st of 2022; is that right?

5 **A.** Oh, Mr. Wendell Stone?

6 **Q.** Wendell Stone. I'm sorry. I used to work for Wendell
7 Willard, so that is why I probably messed that up.

8 **A.** Okay.

9 **Q.** Is that true? You attended his deposition?

10 **A.** Actually, it was a 30(b)(6) deposition. Not his personal
11 deposition.

12 **Q.** And the 30(b)(6) was of the Coffee County Board of
13 Elections?

14 **A.** Yes.

15 **Q.** Okay. Were you surprised to learn at that deposition that
16 the Coffee County Board of Elections did not know about the
17 SullivanStrickler access?

18 MR. BROWN: Objection. Do you mean that Mr. Stone
19 testified that the board didn't know about it?

20 MR. BELINFANTE: Well, it is a 30(b)(6) binding the
21 county, but sure.

22 THE COURT: I don't know that we have that in front
23 of us. Do we have that right now?

24 MR. BELINFANTE: No. But I can get it if that is --
25 I didn't think the issue was the --

1 MR. BROWN: No. The way you framed the question is
2 you're asking her two things. Number one, did you believe him;
3 and, number two, did you know that before he said it. So you
4 need to unwrap that. You need to unpack that.

5 MR. BELINFANTE: Okay. I can do that.

6 BY MR. BELINFANTE:

7 Q. Do you recall Mr. Stone testifying on behalf of the Coffee
8 County Board of Elections that the board did not authorize
9 SullivanStrickler to enter and image the equipment?

10 A. I do recall his testimony to that effect.

11 Q. Okay. And do you recall him testifying that the board did
12 not even know that SullivanStrickler had come in and imaged the
13 equipment?

14 A. I don't recall that specific testimony. But that would
15 not be surprising. That would seem consistent with his general
16 testimony that day.

17 Q. Okay. And do you recall him testifying he did not know
18 about Doug Logan or any of the Cyber Ninja affiliates coming in
19 and imaging the equipment or anything else to that nature?

20 A. I don't recall that specific testimony. But it doesn't
21 surprise me.

22 Q. Okay. You were here for Investigator Blanchard's
23 testimony in this case; right?

24 A. Yes.

25 Q. Do you recall him being asked -- and I'm paraphrasing --

1 if he had known about the Scott Hall or if he had more
2 information about the activities of SullivanStrickler in Coffee
3 County that it would have led to a different response?

4 MR. BROWN: Different response when?

5 MR. BELINFANTE: When he knew. Well, I mean, that is
6 kind of the point, isn't it? Let me -- I'll --

7 MR. BROWN: He did know about the reporting.

8 BY MR. BELINFANTE:

9 Q. Were you here -- you were here for Mr. Blanchard's
10 testimony?

11 A. I was.

12 Q. Okay. And did you understand Mr. Blanchard to testify
13 that had he had all of the information he could have
14 investigated more?

15 A. No, I don't really recall that.

16 Q. You have publicly criticized the State for being, quote,
17 slow to respond or slow to investigate the issues in Coffee
18 County; isn't that right?

19 A. That is correct.

20 Q. And you've publicly stated the State has been, quote,
21 repeatedly looking the other way when faced with flashing red
22 light of serious voting security problems; is that right?

23 A. That is correct.

24 Q. And you are describing Coffee County when saying that; is
25 that right?

1 **A.** I don't know exactly what quote that is. But I could have
2 been describing Coffee or much more generally.

3 **Q.** Okay. That is fair.

4 MR. BELINFANTE: May I approach the witness, Your
5 Honor?

6 THE COURT: Sure.

7 Why don't you provide whatever -- show it to the
8 counsel first before you come up.

9 MR. BELINFANTE: I am.

10 Now may I approach the witness?

11 THE COURT: Do they have any objections, before you
12 go up?

13 MR. CROSS: I think it depends on what he is doing.

14 MR. BELINFANTE: I'm just approaching the witness.

15 MR. CROSS: I have no objection to that.

16 THE COURT: Then tell her -- what is the concern?

17 MR. CROSS: Well, it is a newspaper article, so I
18 think it just depends on where he is going, Your Honor.

19 THE COURT: Are you planning to share it with me?

20 MR. BELINFANTE: Yes, Your Honor.

21 BY MR. BELINFANTE:

22 **Q.** Ms. Marks, if you could turn to Page 2 of 6 of what has
23 been premarked Defendants' Trial Exhibit 1259.

24 **A.** Yes.

25 **Q.** And the second to last paragraph.

1 This is an article, by the way.

2 Who wrote this article, Ms. Marks?

3 **A.** It looks like Kate Brumback of Associated Press.

4 **Q.** And you know Ms. Brumback, don't you?

5 **A.** I do.

6 **Q.** Okay. Do you recall telling Ms. Brumback that the State
7 has been, quote, repeatedly looking the other way when faced
8 with flashing red lights of serious voting system security
9 problems?

10 **A.** I recall generally saying something like that.

11 **Q.** Okay. And that would include the incidents in Coffee
12 County for which individuals have been indicted and some have
13 pled guilty; is that right?

14 **A.** That would certainly include that; correct.

15 MR. BELINFANTE: Your Honor, I would move to enter
16 into evidence Defendants' Trial Exhibit 1259.

17 THE COURT: No. This is just an article. She
18 acknowledged that she had -- that she made that statement.

19 MR. BELINFANTE: Okay.

20 BY MR. BELINFANTE:

21 **Q.** Ms. Marks, do you still have Defendants' Exhibit 194 in
22 front of you?

23 THE COURT: What is it?

24 MR. BELINFANTE: The Tweet with the picture of
25 Mr. Pulitzer on the front where we focused on the comment in

1 the back about South Carolina.

2 THE WITNESS: Let me look for a moment.

3 MR. BELINFANTE: Sure.

4 THE COURT: If you recall, I asked you to delete the
5 first page from the exhibit, just for future notice.

6 MR. BELINFANTE: I'm sorry. What, Your Honor?

7 THE COURT: Was this the one where I told you to
8 delete the front page?

9 MR. BELINFANTE: Yes, Your Honor. And I said I might
10 be coming back to it.

11 THE WITNESS: Mr. Belinfante, 194 you said?

12 BY MR. BELINFANTE:

13 Q. Defendants' Trial Exhibit 194. There is another sticker
14 on there that says CGG --

15 A. I've got that.

16 Q. Okay. And I think we talked about this before. The
17 individual who is testifying in that picture is Jovan Hutton
18 Pulitzer; is that right?

19 A. That's correct.

20 Q. Okay. And in the series of Tweets you are --

21 THE COURT: I don't have it any longer.

22 Here it is. I'm sorry. Go ahead.

23 BY MR. BELINFANTE:

24 Q. In this series of Tweets, you are criticizing, fair to
25 say, Mr. Pulitzer's testimony before the State Senate

1 committee; is that right?

2 **A.** That is fair to say.

3 **Q.** Okay. You went on to provide a more lengthy rebuttal to
4 Mr. Pulitzer's statements to the committee; is that right?

5 **A.** I prepared a written rebuttal to be posted online. It
6 wasn't sent to the committee, I don't believe. I might have.

7 **Q.** Okay. Was it posted online?

8 **A.** I think in my Tweet number two where I say my annotations,
9 that was probably a link to my annotations on his testimony.

10 MR. CROSS: Your Honor, could we get the relevance?
11 We're past 2:00. We still have Mr. Sterling. I don't
12 understand how this matters.

13 MR. BELINFANTE: Your Honor, in fairness I think our
14 case is still taking far less time than --

15 THE COURT: All right. I don't have any problem with
16 how long your case is. But I don't know what the relevance is.

17 MR. BELINFANTE: I'm --

18 THE COURT: You know, I was asking you that before
19 when I said let's just toss the first page and you didn't say,
20 oh, there is something coming.

21 MR. BELINFANTE: I said there may be, I thought. If
22 I didn't, I apologize. That was certainly my recollection and
23 intent.

24 THE COURT: Okay.

25 But what is the relevance?

1 MR. BELINFANTE: The relevance is -- and I'm about to
2 get to what we have marked as State's 1137, which is the
3 rebuttal Ms. Marks has just talked about, and I have maybe four
4 questions about it.

5 THE COURT: Well, show the rebuttal.

6 MR. BELINFANTE: I think they have it now. Do you
7 not? Oh, I thought -- would Your Honor like a copy?

8 THE COURT: Yes.

9 MR. CROSS: It looks like it has something to do with
10 patents, Your Honor. I don't understand what the relevance is.

11 THE COURT: What page do you want us to look at?

12 MR. BELINFANTE: Well, start on Page -- I have
13 questions about Page 2, Page 4, and that's it.

14 MR. CROSS: It looks likes this is all about scanning
15 and the adjudication process, which doesn't seem to be at
16 issue.

17 MR. BELINFANTE: This is the problem. And I'm not
18 trying to be belligerent. But if I could just ask the
19 question, then I could respond to what the objection is. But
20 much like the motion on 5.17, it is premature.

21 MR. BROWN: Okay. Go ahead.

22 MR. CROSS: Go ahead.

23 Sorry. That is for you to say, Judge.

24 We'll withdraw the objection and see where it goes.
25 But I don't see the relevance.

1 THE COURT: Well, the problem is I would have to read
2 all of Mr. Hutton Pulitzer's comments single spaced, which
3 are -- it is about mail-in ballots, which are actually not the
4 issue before us. And we have a quick two-sentence response
5 from CGG.

6 MR. BELINFANTE: Your Honor, I'll be happy to offer a
7 proffer if that would help.

8 THE COURT: Go ahead and do that.

9 MR. CROSS: Josh, can I help real quick?

10 MR. BELINFANTE: Sure.

11 MR. CROSS: Your Honor, I think for efficiency sake,
12 if you want to allow him to ask his questions conditionally and
13 you can decide later --

14 THE COURT: That's fine.

15 MR. CROSS: -- what to do with it, that probably
16 helps us move more quickly.

17 THE COURT: That's fine. I just want to point out
18 though, if this was a serious piece of evidence I would have
19 preferred you to have drawn my attention to it when I asked
20 about the first page. But that is fine.

21 MR. BELINFANTE: My apologies, Your Honor.

22 THE COURT: I'm just not sure it is.

23 Go ahead.

24 MR. BELINFANTE: May I approach the witness?

25 THE COURT: Yes.

1 And I will proceed as suggested, as with many other
2 things, will look at -- consider its admissibility on a
3 conditional basis. And you can proffer this and I'll decide
4 later, after I have heard it --

5 MR. BELINFANTE: Thank you, Your Honor. And I'll try
6 to move efficiently.

7 THE COURT: -- after I've had a chance to actually
8 seriously review the document as opposed to scanning it.

9 BY MR. BELINFANTE:

10 **Q.** Ms. Marks, does this document represent the -- I'm trying
11 to find your word again -- annotations in the Tweet from
12 January 1, 2021, on Defendants' Trial Exhibit --

13 **A.** Probably so, I'm just obviously flipping through it as we
14 sit here.

15 **Q.** Sure.

16 **A.** Probably so.

17 MR. BELINFANTE: All right. With that, Your Honor, I
18 would move to admit Defendants' Trial Exhibit 1137.

19 MR. BROWN: Object, Your Honor. There is no -- he
20 hasn't asked a question -- I don't know what the relevance of
21 this is. Is he going to point to --

22 THE COURT: Is there something that you can --

23 MR. BELINFANTE: Sure. I didn't want to read the
24 document into the record unless it was admitted.

25 THE COURT: I conditionally will allow it, but I'm --

1 I may reject it, but I'm going to allow you to proceed right
2 now.

3 MR. BELINFANTE: Understood. I misunderstood. My
4 apologies again.

5 BY MR. BELINFANTE:

6 Q. All right. Ms. Marks, if you could look at Page 2 of
7 Defendants' Exhibit 1137.

8 The first annotation from CGG reads, there has been no
9 credible allegations of counterfeit ballots in Georgia. This
10 is a fabricated claim set up for unethical reasons.

11 Do you see that?

12 A. I do.

13 Q. Do you still believe that?

14 A. I do.

15 Q. Okay. So you understood at least in January of 2021 that
16 part of the challenge that the Secretary of State's office was
17 dealing with in terms of allegations about the 2020 election
18 dealt not with the electronic voting equipment but with
19 hand-marked paper ballots?

20 A. Well, presumably all kinds of ballots.

21 And by the way, you asked me about January 2021. I'm not
22 sure exactly when I did these annotations. I see I posted it
23 January 1. Okay. That's fine.

24 Q. All right. And after that part we just looked at, there
25 is a statement from Mr. Pulitzer. And then you respond again

1 there are no credible allegations of ballots being repeatedly
2 scanned to add more votes.

3 Do you see that?

4 **A.** I do.

5 **Q.** Okay. And you believed that on January 1 of 2021; is that
6 right?

7 **A.** I did believe that at that time.

8 **Q.** Okay.

9 MR. BELINFANTE: Your Honor, that is what I was going
10 to do with the document, and so I don't know if you want to
11 make a ruling on its admissibility at this point. I'm just
12 moving along, and so I'll leave it to the Court.

13 THE COURT: All right.

14 MR. BROWN: Your Honor, the Coalition has no
15 objection to that.

16 THE COURT: To their admission?

17 MR. BROWN: To the admission of the document for
18 whatever it is worth.

19 THE COURT: All right. What about the Curling
20 plaintiffs?

21 MR. CROSS: No objection, Your Honor.

22 THE COURT: All right. Then I'll admit it.

23 I think it was not a good use of time though.

24 Mr. Pulitzer has already irritated me in the length
25 of his one line no paragraph. So he is obviously somebody who

1 is very proud of himself, from his remarks. I'm glad for him.

2 Go ahead.

3 BY MR. BELINFANTE:

4 **Q.** Ms. Marks, we're going to pull up on the screen
5 Exhibit 728, which has already been admitted. It is the
6 National Academies report.

7 Are you familiar with this document?

8 **A.** I am.

9 **Q.** Okay.

10 MR. BELINFANTE: Can you go in the preface,
11 Mr. Montgomery, scroll down to -- I believe it's Page VI -- I'm
12 sorry, XI, 11.

13 BY MR. BELINFANTE:

14 **Q.** Do you see the sentence that starts the second paragraph,
15 however, by the time the committee met -- by the time the
16 committee met for the first time in April 2017, it was clear
17 that the most significant threat to American election system
18 was coming not from faulty or outdated technologies but from
19 efforts to undermine the credibility of election results?

20 Do you see that?

21 **A.** I do.

22 **Q.** Do you agree that a threat to American elections is our
23 efforts to undermine the credibility of election results?

24 THE COURT: All right. I'm not going to allow you to
25 proceed. That is a whole philosophical issue. And it is not a

1 proper question here.

2 MR. BELINFANTE: All right. No further questions at
3 this time then.

4 DIRECT EXAMINATION

5 BY MR. BROWN:

6 Q. Good afternoon, Ms. Marks.

7 A. Good afternoon.

8 Q. I want to pick up on the very last exchange involving
9 Mr. Pulitzer.

10 Is it important for you as an advocate and as an
11 interested citizen in fair elections to be careful about the
12 public allegations you make about the integrity of the election
13 system?

14 A. It is important.

15 Q. And is it, therefore, important for you to gather the
16 facts before hurling unfounded allegations?

17 A. Yes. Yes, it is. And we certainly try to do that. We
18 try never to hurl unfounded allegations.

19 Q. And in the case of Coffee County, did you undertake any
20 efforts to find out what happened?

21 A. I certainly did.

22 Q. We'll get into that in a minute.

23 It was interesting you responded that you had contacted
24 Rick Barron the day after you talked to Scott Hall. But I
25 notice that even though you mentioned it twice, Mr. Belinfante

1 didn't want to go there, I guess.

2 Tell me about your conversation with Rick Barron.

3 **A.** I believe it was the morning after I had heard from
4 Mr. Hall. It was clear that he was obsessed with Fulton
5 County. So I called Mr. Barron who was, you know, then the
6 election supervisor and Fulton was a defendant in the case.

7 And said Rick, have you ever heard of a guy named Scott
8 Hall? And he immediately launched into telling me about --

9 MR. BELINFANTE: Objection. Hearsay. Nonparty.

10 MR. BROWN: Your Honor, the importance of this is the
11 impact it had upon Ms. Marks, obviously. We're not concerned
12 with the truth of the statements. Only that they were made.
13 She has personal knowledge of what Rick Barron told her.

14 THE COURT: It is admitted on that limited basis.

15 BY MR. BROWN:

16 **Q.** Go ahead.

17 **A.** That Mr. Barron in -- generally told me in pretty good
18 detail about Mr. Hall's menacing visits to the Fulton County
19 Board of Elections doing things like flying drones over the
20 parking lot, over the dumpster, following employees and
21 harassing employees and basically cautioned me to be very
22 careful with respect to personal safety, other issues as it
23 related to, you know, having much contact with Mr. Hall.

24 And he let me know that Mr. Hall had continued to hurl
25 wild allegations about the election and Fulton County's

1 involvement in the election.

2 **Q.** In March of 2021, were you concerned about the personal
3 safety of either you or members of your organization in
4 relation to the contact made by Mr. Hall?

5 **A.** Yes. And as, you know, the days and months went by --
6 days and weeks went by, I became more concerned the more I
7 understood about Mr. Hall and the -- the chaotic environment
8 still surrounding the controversies of the 2020 election.

9 **Q.** Ms. Marks, you mentioned in the cross-examination that at
10 the time that you got the call from Scott Hall I believe
11 discovery was stayed in this case; is that right? Or is that
12 your recollection?

13 **A.** Yes. Discovery had not opened. It opened a few months
14 later.

15 **Q.** And just generally do you recall when it reopened?

16 **A.** Yes. It was -- I believe it was in June of 2021.

17 **Q.** And when it reopened, without getting into any
18 attorney-client or work product, did the Coalition or Curling
19 or both of them initiate formal discovery of the State relating
20 to unauthorized access to county election equipment in the
21 State of Georgia?

22 **A.** Yes. It was one of the first things that we served
23 discovery requests on.

24 **Q.** And then in the following year, did Coffee County -- did
25 the Coalition follow up those discovery requests with more

1 discovery requests?

2 **A.** Absolutely. Quite intensive discovery. Taking up most of
3 2022. And that is after I initiated multiple efforts at --
4 before discovery opened in open records requests to try to
5 understand more about what could have happened in Coffee.

6 **Q.** Were you -- in making the Open Records Act request, were
7 you in any way hiding the information that you learned from
8 Mr. Hall?

9 **A.** Well, since they were public open -- they were public
10 documents, certainly not.

11 **Q.** And then after the recording was played in Mr. Sterling's
12 deposition, did you see any immediate response by the State to
13 start up their investigative resources to investigate the
14 Coffee County incident?

15 **A.** Well, we had hoped to. But we did not. In all of our
16 inquiries to Coffee County about what kind of investigation
17 might be beginning, they told us repeatedly we've not heard
18 anything from the State.

19 **Q.** What was the -- were there any public statements, say, for
20 example, by Gabe Sterling after the telephone recording was
21 repeated in front Mr. Sterling in his deposition about what the
22 State thought about Coffee County and the allegations?

23 **A.** Yes. So the deposition, as I recall, was February 24th,
24 2022. And, you know, there began to be a little more surfacing
25 of questions.

1 And then on April 29th, 2022, Mr. Sterling was speaking to
2 a meeting at the Carter Center that was videotaped and he very
3 emphatically insisted that the Coffee County allegations had
4 been that the server was imaged but that it was untrue. That
5 the system had held and that -- or the controls had held and
6 that it was completely untrue. Did not happen.

7 **Q.** Now, there was some discussion about what you knew when
8 and what the Secretary knew when.

9 Did you know in February of 2021 that the Secretary of
10 State had hired Robert Sinners to come in house for the
11 Secretary of State's office?

12 **A.** Did I know that in February of 2021?

13 **Q.** Correct.

14 **A.** No, I don't think I knew who he was at that time.

15 **Q.** Did you know in the spring that Doug Logan of Cyber
16 Ninjas' fame had left his business card on Misty Hampton's
17 desktop computer?

18 **A.** Are you asking me if I knew that in the spring of 2021?

19 **Q.** If you knew that when the Secretary knew that in the
20 spring of 2021.

21 **A.** I did not know that.

22 **Q.** And did you know in June of 2021 that the Secretary had
23 picked up the EMS server and the ICC work station?

24 **A.** No, I did not know that.

25 **Q.** After the videotape -- the audiotape was played for the

1 State defendants during the deposition, you had your own
2 deposition taken; correct?

3 **A.** Correct.

4 **Q.** And it was taken by Mr. Tyson; is that right?

5 **A.** It was my 30(b)(6) --

6 **Q.** 30(b)(6).

7 **A.** -- deposition, yes. And it was taken by Mr. Tyson.

8 **Q.** Okay. And in that deposition, did the State defendants
9 indicate one way or the other whether they had any interest in
10 finding out what else you knew about Coffee County?

11 MR. BELINFANTE: Objection. Calls for speculation
12 into the mind of Mr. Tyson.

13 MR. BROWN: It does not.

14 THE COURT: Did the State defendants indicate one way
15 or the other whether they had any interest in finding out what
16 else you knew about Coffee County?

17 Well, what was your impression as to whether they
18 were -- you were being asked for any further information?

19 THE WITNESS: I was not. I raised the issue of
20 Coffee County during the deposition. But there were no
21 questions at all about Coffee County that were asked of me.

22 BY MR. BROWN:

23 **Q.** So the audiotape had been played a month or so before;
24 right?

25 **A.** A little less than a month before. A few weeks before.

1 Q. And they had the formal deposition of your organization;
2 right?

3 A. Yes.

4 Q. And you even introduced the topic of Coffee County; right?

5 A. Correct.

6 Q. And they didn't ask you any questions about it; right?

7 A. That is correct.

8 Q. Now, as the months went on and you started with the
9 efforts for you to investigate actually what happened in Coffee
10 County, your -- your organization and the Curling plaintiffs
11 took a number of depositions; correct?

12 A. Correct. And that was, again, after we -- that was after
13 discovery opened, of course. But, you know, after we had
14 already spent some time prior to discovery trying to get public
15 documents.

16 Q. Right. And did the State defendants -- in an effort to
17 figure out what happened, did they launch their own discovery
18 of the Coffee County incident?

19 A. Not anything that I'm aware of. Not anything that has
20 made the public eye.

21 Q. But they were -- they came to the depositions; right?

22 A. They certainly were there for every deposition that I was
23 in or watched.

24 Q. And -- they watched?

25 A. I said any deposition I watched they were there.

1 Q. Were you present for the deposition of Eric Chaney?

2 A. I was.

3 Q. And Eric, did he take the Fifth Amendment in response to
4 some questions?

5 A. I think about 250 times.

6 Q. And the plaintiffs, I can't remember me or Mr. -- I
7 believe it was Mr. Cross asked him a bunch of questions about
8 Coffee County?

9 A. Certainly.

10 Q. And did the State have the opportunity, at the end of the
11 deposition, to ask Mr. Chaney all the questions that the State
12 must have had by then since they were concerned about what
13 happened in Coffee County? Did they have that opportunity?

14 A. They did have that opportunity.

15 Q. And did they take that opportunity?

16 A. Not that I recall.

17 Q. Let me play the tape.

18 MR. BROWN: Your Honor, we're going to play the
19 entirety of the State's examination of Mr. Chaney. It is a
20 two-minute tape.

21 MR. BELINFANTE: Your Honor, I have two objections.
22 One is I'm not sure that playing a prior consistent statement
23 is something that is permitted.

24 Number two -- and this is more just going to the
25 protocols that we've adopted -- I'm not going to use this as an

1 admission or a grounds to exclude, but this is not something
2 that was produced to us in terms of what they intended to use.

3 I'm not going to say that is an objection that you
4 should rule it on. If we get into that later and we're accused
5 of it, then I just want to note that for the record. This
6 isn't a direct exam.

7 MR. BROWN: Your Honor, I'm doing recross. I didn't
8 know that Mr. Belinfante would go down the road he went down.
9 And we objected to some of it. And now it is fair --

10 THE COURT: He has never -- he was at the deposition.

11 MR. BROWN: I think they designated this.

12 THE COURT: They designated --

13 MR. BELINFANTE: Yeah. I just don't want --

14 THE COURT: I just wanted to understand.

15 All right. Go ahead.

16 MR. BELINFANTE: If we get into something down the
17 road, I just want it marked. That's all.

18 THE COURT: I could tell you to play it at another
19 time. But go ahead.

20 **(Playing of the videotape.)**

21 THE COURT: Wait a second. Wait. Would you please
22 stop it for a second. Thank you.

23 MR. BELINFANTE: Your Honor, much like the article
24 that I put in front of Ms. Marks where she testified, gave her
25 statement, here we have a situation where she has testified as

1 to what Mr. Chaney said. I don't see the importance and
2 it's -- of him in using hearsay evidence to validate what she's
3 already testified to.

4 MR. BROWN: Your Honor, it is not hearsay. We have
5 the sworn testimony. It is their designation. We are showing
6 that -- she's already said she was there. I'm going to ask her
7 if that is Mr. Chaney testifying.

8 And the Court is entitled to hear that -- the
9 testimony.

10 THE COURT: Does she have more after this, or is this
11 something you prefer to do --

12 MR. BROWN: She has more.

13 THE COURT: All right. Well, go ahead.

14 That is related to this in some fashion?

15 MR. BROWN: Yes.

16 THE COURT: All right.

17 You can go ahead now. Wind yourself back.

18 **(Playing of the videotape.)**

19 BY MR. BROWN:

20 **Q.** Now, Ms. Marks, that was I think Mr. Pico-Prats asking the
21 questions?

22 **A.** Yes.

23 **Q.** And you attended virtually or in person all of the other
24 depositions; correct?

25 **A.** Yes.

1 Q. And is it fair to say that the State's examination of the
2 Coffee County witnesses resembled Mr. Pico-Prats' tough
3 examination of Mr. Chaney about you in particular; right?

4 MR. BELINFANTE: Objection. Tough examination.
5 Let's back up a little bit.

6 THE WITNESS: Yes. In almost every deposition of the
7 Coffee County witnesses, that seemed to be the only thing that
8 the State was really asking about is what kind of
9 communications they had had with me, how long they had known
10 me. That seemed to be their primary focus.

11 BY MR. BROWN:

12 Q. Did they ask any sort of law enforcement-related questions
13 of the witnesses?

14 A. Not that I recall.

15 Q. Okay. And the Coalition and Curling also issued a number
16 of third-party subpoenas; correct?

17 A. Yes. We issued quite a number of third-party subpoenas.

18 Q. And did the State? Do you recall?

19 A. I don't think that they issued any subpoenas either with
20 respect to this litigation or separately for Coffee County.

21 Q. And is it your understanding that the SEB, which is also a
22 defendant, not just the Secretary -- whether the SEB itself has
23 subpoena powers apart from what may be undertaken through the
24 federal court?

25 A. Yes. It is my understanding that the State Election

1 Board, the SEB, does have subpoena power.

2 **Q.** And are you aware of any efforts that the SEB took during
3 this entire time after they had the Hall tape to issue one
4 subpoena to any witness anywhere in Georgia about Coffee
5 County?

6 MR. BELINFANTE: Objection. If Counsel could just
7 clarify if he means pursuant to this litigation or an
8 investigation.

9 BY MR. BROWN:

10 **Q.** Either one.

11 **A.** It is my understanding that for the State Election Board
12 that they issued no subpoenas either for -- with respect to
13 Coffee County witnesses or the Coffee County breach witnesses
14 either with respect to this litigation or with respect to
15 investigation.

16 And I think that was reinforced by Secretary
17 Raffensperger's statement to 11Alive saying that they did not
18 issue subpoenas to Coffee County witnesses.

19 **Q.** And -- but the SEB was active investigating some things
20 during that time period, wasn't it, with respect to you?

21 **A.** Oh, they were certainly investigating multiple things
22 about me and Dr. DeMillo and Ronnie Martin and others.

23 **Q.** But we have you three perps here in the room today.
24 Ms. Martin, Dr. DeMillo, and you were the subject of a SEB
25 investigation during the time after they had the Hall tape?

1 **A.** Well, for me it was multiple investigations. But yes.

2 **Q.** And what were the three of you accused of doing? Was it
3 involved with Coffee County or anything like that?

4 **A.** Certainly not involved with Coffee County.

5 Dr. DeMillo and I were accused of, in 2019, at one of the
6 pilot -- not pilot, but excuse me, the -- one of the first BMD
7 elections, we were accused of standing too close to a voting
8 machine when we were doing observation and working with the New
9 York Times crew to explain to them the new voting system. We
10 were accused of standing a little too close.

11 **Q.** Okay. So how long did it take the SEB to investigate that
12 allegation?

13 **A.** They started announcing their investigation within days of
14 the election day where we were observing, and it took months of
15 time.

16 **Q.** And when -- did they drop the charges finally?

17 **A.** Those charges they did drop in June of 2023.

18 **Q.** '23. Just six months ago?

19 **A.** Yes. Well, and the allegations were from 2019.

20 **Q.** And so at the time they weren't investigating the Coffee
21 County breach, the most consequential breach of Georgia's or
22 anybody's election system, the SEB was investigating
23 Dr. DeMillo --

24 MR. BELINFANTE: Objection. Leading.

25

1 BY MR. BROWN:

2 Q. -- a chaired professor at Georgia Tech, Ronnie Martin, and
3 yourself for standing too close to a BMD?

4 MR. BELINFANTE: Objection. Counsel testifying.

5 THE WITNESS: Well, they were -- that is true with
6 respect with Dr. DeMillo.

7 THE COURT: Well, I -- well, the question is there.
8 Go ahead and answer.

9 THE WITNESS: They were investigating Dr. DeMillo and
10 me for standing too close. And they were investigating Rhonda
11 Martin and me for purportedly disturbing voting at a location
12 we had never even heard of, much less been to.

13 BY MR. BROWN:

14 Q. And did you have to hire an attorney to defend you in
15 that?

16 A. We did.

17 Q. Did you pay that attorney?

18 A. We did.

19 Q. No, you didn't.

20 A. We did.

21 MR. CROSS: Did that hit a little close to home,
22 Bruce?

23 MR. BROWN: I object.

24 THE COURT: You object.

25 MR. BROWN: May I voir dire my own witness to be

1 sure?

2 Anyway, I'll withdraw that. That was just in jest.

3 BY MR. BROWN:

4 **Q.** Okay. You were asked -- let me shift gears a little bit
5 and go back to the November, December 2020 time frame.

6 Earlier in your examination about Coffee County,
7 Mr. Belinfante asked you about some of the issues that were
8 stirring -- about a number of issues, but one of them was
9 Coffee County.

10 **A.** Yes.

11 **Q.** Do you recall that testimony?

12 **A.** I do.

13 **Q.** And I believe you referenced some litigation; is that
14 right?

15 **A.** Yes.

16 **Q.** I'm going to hand to you Coalition Plaintiffs' Exhibit 12.

17 Ms. Marks, can you identify Coalition Plaintiffs'
18 Exhibit 12?

19 **A.** Okay. This is a transcript of a hearing in front of
20 Judge Batten here at the district court, and it was on
21 February -- excuse me, November 29, 2020.

22 **Q.** And was it your understanding that Ms. Powell, in this
23 litigation, was seeking access to election equipment?

24 **A.** Yes.

25 THE COURT: Ms. Powell is counsel for the plaintiff?

1 Is that what you mean?

2 MR. BROWN: Yes. Yes. I should make that clear.

3 MR. CROSS: For the plaintiffs in that action.

4 THE COURT: Right.

5 BY MR. BROWN:

6 **Q.** And -- hang on just one second.

7 If you -- and, Ms. Marks, you learned about this
8 litigation at or about the time or later? When did you learn
9 about this litigation?

10 **A.** I was probably generally aware of it as it was filed. It
11 was a pretty high profile case, you know. This was *Pearson V*
12 *Kemp*, and a lot of people referred to it as the Kraken case.
13 So I was aware of it as it was proceeding.

14 **Q.** And the --

15 MR. BROWN: I move to admit, Your Honor. This is
16 from PACER.

17 THE COURT: I need to know what the relevance is at
18 this point. I'm not --

19 BY MR. BROWN:

20 **Q.** Ms. Marks, in that lawsuit, did the State take a position
21 of whether it would be dangerous or not to have the images of
22 election equipment made by unauthorized or even authorized
23 people?

24 **A.** Yes. The defendant, in addition to Governor Kemp, I
25 believe included the Secretary of State, and I believe it is on

1 Page 13.

2 **Q.** Well, first of all, who is representing the defendants,
3 Page 1?

4 **A.** The Attorney General's office, Attorney Willard and
5 Attorney McGowan.

6 **Q.** Okay. And then go back to Page 13, I think Line 20 or so.

7 **A.** Right. Did you want me to read from it where it says --

8 **Q.** Yes.

9 **A.** That in that case where security and reliability of the
10 DRE machines, which have now been retired, even Judge Totenberg
11 recognized you cannot willy-nilly allow individuals from
12 outside of state and county custody and control procedures to
13 have access to those machines. It poses a security risk for
14 Ms. Powell's minions to go in and image everything, download
15 the software, and figure out for future elections a way to hack
16 in so that their preferred candidates can win.

17 That is, in effect, what they are seeking here. They want
18 to image, just as they said, not only the data of the machines
19 but the entire software package, security protocols that are
20 set up. That is something that no federal court can possibly
21 countenance. Even if they had the appropriate defendants here,
22 which they don't, you cannot allow, during the midst of an
23 election cycle, a third party to come in and get the proverbial
24 keys to the software kingdom.

25 **Q.** Okay. Now, the -- so the State would have had knowledge,

1 just as you did, that there were people like Ms. Powell that
2 were trying to get at the State's software; right?

3 **A.** Yes. And I believe that there were multiple counties here
4 that she had named that she wanted the software from, including
5 Coffee and one of the plaintiffs here was Cathy Latham of
6 Coffee County.

7 **Q.** And so -- oh, so Cathy Latham was a plaintiff in this
8 lawsuit?

9 **A.** Yes.

10 MR. BROWN: Your Honor, I had moved to have that
11 document admitted.

12 Josh, you didn't have any objection, did you?

13 MR. BELINFANTE: No.

14 THE COURT: Okay.

15 COURTROOM DEPUTY CLERK: That was Coalition 12?

16 MR. BROWN: Coalition 12.

17 THE COURT: It is admitted then.

18 BY MR. BROWN:

19 **Q.** Ms. Marks, I'm going to change gears a little bit and go
20 back to the first part of your deposition when you were talking
21 about CGG and what it does.

22 CGG is -- has been active in many states; correct?

23 **A.** Correct.

24 **Q.** What other states?

25 **A.** Colorado. Initially we had a lot of focus in Colorado.

1 We've done work in South Carolina, also North Carolina,
2 certainly Georgia.

3 And then we will tend to get involved on, you know,
4 short-term projects in other states as they arise to the extent
5 we have any bandwidth to do it. These days we're having to
6 turn down a lot of requests for help from activists in other
7 states.

8 **Q.** What are some of the projects that you have had to divert
9 resources from in order to support activities in Georgia
10 relating to the BMDs?

11 **A.** Well, there's kind of a shamefully long list. But one of
12 the things that is a very current topic that has been a topic
13 for us since about 2014 that we're just unable to participate
14 in -- and that is the new level of argument about internet
15 voting.

16 Internet voting, unfortunately, is gaining popularity
17 again. And state after state is considering internet voting.
18 And it is something we would like to be very much engaged in
19 that fight. And we've just had to stand down in the last year
20 or so. Although we've gotten many requests to help -- to help
21 in that fight.

22 Another current topic is ranked-choice voting or IRV
23 voting. And it is something where we have probably a good bit
24 of expertise. But, unfortunately, just the inability to
25 respond to the requests that we have received, everything from

1 Boulder city council to locally, this has been -- locally here
2 in Georgia, this has been a recent issue of ranked-choice
3 voting.

4 And we would have very much like to continue education
5 efforts to explain why that is not a transparent and good
6 election system.

7 **Q.** And in terms of what resources you -- of the resources
8 that you have diverted to Georgia, is all of it simply
9 litigation?

10 **A.** No, it is certainly not simply litigation.

11 **Q.** Have you undertaken to oppose or fight or educate people
12 in means other than through litigation?

13 **A.** Certainly.

14 **Q.** How so?

15 **A.** And not simply the topic of the voting system security per
16 se. But we have held -- haven't done it in a while, but we
17 have held educational webinars for county election officials,
18 for voters. We participate. We participated with other voting
19 rights groups in educational programs.

20 One of the things that we have done in addition to
21 litigation on the voting system security front is we have spent
22 an inordinate amount of time filing formal petitions for rule
23 changes with the State Election Board.

24 **Q.** And I'm going to go through some of those just real quick
25 with you.

1 **A.** Okay.

2 **Q.** Ms. Marks, let me hand you what has been marked as
3 Coalition Plaintiffs' Exhibit 10.

4 Do you see that?

5 **A.** I do.

6 **Q.** And just what is this collection of documents generally?

7 **A.** This happens to be an email with attachments that I wrote
8 to Judge Duffey as chair of the State Election Board on March
9 the 20th, 2023, as I had begun to gather, from public records
10 requests, information that showed that Misty Hampton had been
11 allowed to program the voting system in Treutlen County after
12 she had been fired or forced to resign in Coffee County.

13 MR. BROWN: Move to admit Coalition Exhibit 10, Your
14 Honor.

15 MR. BELINFANTE: Two objections. One, hearsay for
16 anything other than what Ms. Marks is saying.

17 Two, the fact that a county nonparty makes a hiring
18 decision is not relevant to the actions of the State.

19 MR. BROWN: Right. We're not -- well, first, the
20 purpose of the exhibit is to establish the Coalition's efforts
21 to effect change in Georgia outside of the litigation contest,
22 number one.

23 Number two, yeah, we're not -- in terms of the other
24 facts in here, I mean I don't know why the State would oppose
25 them, but we're not asserting them for the truth of the matters

1 asserted.

2 MR. BELINFANTE: Candidly, I have not read all of the
3 20 pages that you just handed me, so ...

4 MR. BROWN: Yeah. This is Coalition Plaintiffs'
5 Exhibit 10 --

6 MR. BELINFANTE: Oh, sure.

7 MR. BROWN: -- that we gave to you about a month ago.

8 MR. BELINFANTE: Yeah. And I assure you I have not
9 read every document you gave to us about a month ago as well.

10 MR. CROSS: What have you been doing, Josh?

11 THE COURT: I'm confused for a different reason,
12 which is we've got the cover letter and then there is a bunch
13 of other documents relating to a number of different things,
14 including Ms. Hampton's invoices, but -- and an Open Records
15 Act request.

16 I mean, are you showing this -- I guess it is her
17 letter. She can identify it. And she -- and if she's
18 presenting the letter for purposes of just simply showing this
19 is the sort of thing that I was trying to bring as a leader of
20 this organization to the chair's attention, that's one thing.
21 Whether it is true or not true --

22 MR. BROWN: That's correct.

23 THE COURT: Do we need all these attachments, I mean,
24 if that is really the purpose of it?

25 MR. BROWN: We do not. I mean, it may be fair to

1 include them in there since they are all together. But no.

2 THE COURT: So these were all attached to her
3 original letter?

4 MR. BROWN: That is correct. Or that is my
5 understanding.

6 BY MR. BROWN:

7 Q. Ms. Marks, is this -- is Coalition Plaintiffs' Exhibit 10,
8 which is a 20-page exhibit -- is that all part of the same
9 collection of documents, from your perspective?

10 A. Yes. I believe that is correct. Without examining every
11 one, that is -- this would be the collection of documents I
12 sent to Judge Duffey to give him the background to express our
13 concern.

14 Q. And just for the record, this is an email to Judge Duffey.
15 Although he at the time was a defendant in this
16 litigation, this communication did not relate to the litigation
17 per se; correct?

18 MR. BELINFANTE: Your Honor, objection. If it
19 doesn't -- well, again I still don't see the relevance to this.
20 I also don't see the need to introduce the exhibit if the
21 witness has testified.

22 And according to Mr. Brown the evidence is consistent
23 with her memory --

24 MR. BROWN: Your Honor, we get to -- go ahead, I'm
25 sorry.

1 MR. BELINFANTE: That's all right.

2 And finally, there's hearsay throughout the document.
3 So it is -- you know, there's all sorts of problems for it for
4 limited relevance given that it is not about the case.

5 MR. BROWN: Well, we are entitled to introduce
6 admissible evidence that is consistent with the witness'
7 testimony. It is not like a rule. It doesn't have to
8 contradict your own witness -- there is no rule of evidence
9 that the only evidence that I can get into evidence is evidence
10 that is bad for my client.

11 THE COURT: Yeah. That people --

12 MR. CROSS: It would be a heck of a rule.

13 MR. BELINFANTE: That is only in administrative
14 court.

15 THE COURT: That has got to be in the pretrial order.

16 MR. BROWN: I was sick that day.

17 THE COURT: All right. Let me just help you about
18 this. I mean, it is not -- it is not admitted for the truth of
19 any of the statements inside of it. It is admissible for
20 purposes of her saying -- the plaintiff saying, you know, we
21 were again -- we were advocates for change in the election
22 system and for -- in election integrity. And then she writes
23 to the chair of the -- Judges Duffey, who was chair then at
24 that point of the State Election Board.

25 So that's the only thing it can be admitted for, as I

1 see it. But it is not admissible for the truth of the matter.

2 MR. BROWN: No. It is relevant for standing and
3 diversion.

4 THE COURT: I understood that.

5 MR. BELINFANTE: And I'm sorry, Your Honor, to be a
6 bit dense. But just for clarity's sake, the evidence is not
7 going to be admitted or used for the hiring of Misty Hampton by
8 a third-party, Treutlen County.

9 THE COURT: No. It is just her raising these issues
10 to Judge Duffey in his capacity as chair of the State Election
11 Board.

12 MR. BELINFANTE: About their advocacy?

13 THE COURT: In connection with their advocacy.

14 MR. BELINFANTE: Okay.

15 THE COURT: That is what it is about. That's the
16 relevance. Only for that purpose.

17 MR. BROWN: Right. There is other evidence of the
18 Treutlen County already in evidence. So that is right, Your
19 Honor.

20 BY MR. BROWN:

21 **Q.** Let me hand to you what has been marked as Exhibit 2.

22 What is Exhibit 2, Ms. Marks?

23 **A.** Exhibit 2 is a follow-up letter that I sent to
24 Judge Duffey in his role as the chair of the election board on
25 November 26, 2022, to follow up on a complaint I had filed in

1 June of 2022, a complaint about the failure of the Secretary of
2 State's office to comply with the audit law and audit
3 requirements that were then in Georgia's statutes.

4 And it was one of many follow-ups. And the complaint
5 itself is attached as it was attached to the email I sent to
6 Judge Duffey.

7 MR. BROWN: I move to admit, Your Honor.

8 MR. BELINFANTE: No objection.

9 THE COURT: It is admitted.

10 This one dealt with post election audits; is that
11 right?

12 THE WITNESS: The Exhibit 02, yes, it was with
13 respect to post election audits.

14 THE COURT: Okay.

15 BY MR. BROWN:

16 **Q.** Ms. Marks, let me hand to you what has been marked as
17 Coalition Plaintiffs' Exhibit 5.

18 And can you identify that document for the record, please?

19 **A.** Yes. It was one of several rules petitions that we at
20 Coalition for Good Governance submitted to the State Election
21 Board in 2023 for a petition for rules adoption. And this one
22 happens to relate to counties being able to evaluate their
23 voting system security.

24 **Q.** And, Ms. Marks, putting together proposed rules, does that
25 take some time and resources on your part?

1 **A.** It certainly takes me some time. I'm not a professional
2 at doing this. So yes, this took considerable time for me to
3 put together and talk with our other volunteers about. I asked
4 them for ideas, help putting this together.

5 And so yes, it is a time-consuming effort.

6 MR. BROWN: Move to admit Number 5, please.

7 MR. BELINFANTE: Your Honor, our concern with
8 Number 5 -- and it depends on how Mr. Brown is going to use
9 it -- is on Page 3 there is a discussion of health checks. We
10 were not permitted to offer testimony on health checks.

11 And so if the only evidence in the record on them is
12 this letter, that would be prejudicial to the State.

13 THE COURT: I don't have it. So I can't look at it.
14 I got it. Sorry.

15 MR. BELINFANTE: We'll withdraw the objection.
16 That's fine.

17 THE COURT: All right. It is admitted.

18 MR. BROWN: Thank you.

19 BY MR. BROWN:

20 **Q.** I have one more.

21 Ms. Marks, let me hand to you what has been marked as
22 Exhibit 6.

23 What is Exhibit 6, for the record?

24 **A.** Just a moment. I'm flipping through it.

25 Okay. This is another rules petition that we submitted to

1 the State Election Board in April of 2023, and this is really
2 in response to the Coffee County breaches and other attempted
3 breaches.

4 And that was asking the State Election Board to adopt
5 rules to require the reporting of security incidents -- serious
6 security incidents, such as the Coffee County breach, also
7 require reporting of discovered security vulnerabilities, and
8 also require mitigation for security incidents.

9 And so those were the general topics covered by this
10 particular request.

11 **Q.** And has the security incident reporting rule request been
12 acted upon by the board?

13 **A.** They did act upon it. And they denied it. They denied
14 this and said that they would name a committee to work on
15 adopting security incident reporting and mitigation rules.
16 However -- and they said they would have something -- they
17 would have rules adopted -- planned to have rules adopted back
18 in the fall of 2023. And nothing has come of that.

19 **Q.** Now, you've also presented complaints and proposed rules
20 relating to logic and accuracy testing; is that right?

21 **A.** Yes. We have done that twice and have failed.

22 **Q.** And all of this activity or a lot of this activity is
23 directed at the ballot-marking devices or how much of it is?

24 **A.** Yes. While certainly the rule we just talked about for
25 reporting of security incidents would relate to any type of

1 equipment, whether it be Poll Pads or EMS servers or, you know,
2 a ballot-marking device, certainly.

3 But the LAT rule that we've asked now to be adopted to
4 come in compliance with the statute, it would relate to all
5 equipment. But the big gap today is with the ballot-marking
6 devices. It is almost impossible for them to follow the law.

7 **Q.** And so -- and are you diverting resources from other
8 projects that the Coalition is working on or might be working
9 on to fund those efforts with these rules petitions?

10 **A.** Certainly. There would be many other things that we would
11 prefer to be doing other than these.

12 **Q.** The -- I want to get back. I missed a question about the
13 Scott Hall telephone call.

14 There was a mention of hacker --

15 **A.** Yes.

16 **Q.** -- in the recorded conversation?

17 **A.** Yes.

18 **Q.** Did you have an understanding, at the time, of which
19 hacker he was talking about?

20 **A.** I never have known which hacker he was talking about. He
21 told me it was a young man and that it was a young man who was
22 the son of one of his friends. But he never identified this
23 hacker that he said he had engaged to hack into CGG's
24 litigation files.

25 **Q.** Were you ever able to determine whether anyone had hacked

1 into your litigation files?

2 **A.** We were not. But I did the best I could as an unskilled
3 layman to look to see if there appeared to have been any
4 disturbance in the files and watched online to see if I could
5 find any suggestion that our files had been leaked.

6 And that is as far as I went, other than asking our
7 volunteers to also do those kinds of searches to see if they
8 saw any indication of a leak of our files.

9 **Q.** So although his statements about Coffee County turned out
10 to be closer to the truth, it could very well be he was lying
11 about the hacking into your litigation database?

12 **A.** Right. So much of what he said in his other allegations
13 was, you know, completely baseless, it was impossible to know
14 what he was telling the truth about or not.

15 MR. BROWN: If I could just take a minute and talk to
16 co-counsel.

17 THE COURT: Okay.

18 **(There was a brief pause in the proceedings.)**

19 MR. BROWN: No further questions.

20 THE COURT: I had a question -- so did we admit all
21 your -- those last kind of petition documents?

22 MR. BROWN: Yes, Your Honor. I believe so.

23 COURTROOM DEPUTY CLERK: Number 6?

24 MR. BROWN: 106 [sic].

25 THE COURT: I don't remember your offering --

1 MR. BROWN: Thank you, Your Honor. We move to admit
2 106.

3 THE COURT: Are there any objections?

4 MR. BELINFANTE: No objection.

5 THE COURT: It is admitted.

6 DIRECT EXAMINATION

7 BY MR. OLES:

8 Q. Good afternoon, Ms. Marks.

9 A. Good afternoon, Mr. Oles.

10 Q. Thank you.

11 You already know who I am, so I won't waste time with
12 that.

13 But I do have a couple of questions for you. And do
14 you -- you were asked a number of questions concerning the
15 other activities that your organization engages in, in addition
16 to litigation. I would say non-litigation type activities.

17 And does some of that include the monitoring of the
18 implementation and the operation of the Dominion BMD system?

19 A. In Georgia, yes.

20 Q. Yes. Okay. All right. Thank you.

21 Do you recall in this case completing a supplemental
22 declaration on or about February 12th, 2021?

23 A. I've done so many declarations I would have a hard time
24 identifying it by date. But I would be happy to look at it
25 and --

1 MR. OLES: May I approach, Judge?

2 THE COURT: Yes.

3 THE WITNESS: Yes. I recognize it now, Mr. Oles.

4 BY MR. OLES:

5 **Q.** All right. Thank you.

6 I just placed in front of you what I will represent is a
7 copy of your supplemental declaration.

8 Does that refresh your recollection as to --

9 **A.** Yes.

10 **Q.** -- having completed it?

11 All right. Thank you.

12 THE COURT: What is the date of it?

13 MR. OLES: It is November -- no. I'm sorry.
14 February 12th, 2021.

15 BY MR. OLES:

16 **Q.** So I have just a few questions for you around that.

17 Let's see. So if I understand correctly, you were
18 monitoring events that took place in Gwinnett County -- you
19 were -- in November of -- on or about November 3rd, 2020; is
20 that correct?

21 **A.** Yes. That's correct.

22 **Q.** Okay. And while -- as a result of observing the
23 activities on that occasion, did you have cause to uncover
24 whether or not there were ballots that could not -- that were
25 having difficulty being processed on the Dominion servers?

1 **A.** It wouldn't be fair to say that either CGG or I uncovered
2 that information. That information was quite public. And
3 television cameras were all around and lots of press. And I
4 was one in the crowd paying attention to that. But we did not
5 uncover that.

6 **Q.** Okay. Could you briefly explain what the nature of the
7 issue.

8 **A.** Boy, that is -- I might not be able to recall the details
9 of that. But very generally Gwinnett County, during the
10 presidential election, was having problems scanning the
11 absentee ballots -- absentee by mail ballots, if I recall
12 correctly. And they had tried multiple scans and were getting
13 inconsistent counts.

14 More than that, I really have to think hard to see if I
15 can remember any more.

16 **Q.** Okay. So you -- as you sit here today, you're not able to
17 recall whether or not the cause of that issue was adequately
18 explained or uncovered?

19 **A.** I don't think we ever learned what the root cause of the
20 problem was.

21 **Q.** Okay.

22 **A.** I don't believe I ever did at least.

23 **Q.** All right. Do you recall whether or not there was a
24 similar issue in Floyd County?

25 **A.** We are certainly aware of a failure to record a batch of

1 ballots in Floyd County in November 2020. But I can't tell you
2 that it had the same root cause or even the same effect. I
3 just know that there were ballot scanning problems in both
4 counties.

5 **Q.** Okay. Did you observe technical experts from Dominion
6 coming in on that occasion?

7 **A.** We observed gentlemen who we were told were representing
8 Dominion as technicians. I did not ever meet them or learn of
9 their credentials. But that is what I was told.

10 **Q.** Okay. Do you know whether or not on that occasion they
11 made any software changes to the system?

12 **A.** I do not know, myself, whether or not they made software
13 changes to the system. But I think in my declaration it
14 probably states that Harri Hursti, who is one of our experts,
15 observed what he thought appeared to be those technicians
16 making the changes.

17 MR. BELINFANTE: Objection.

18 THE COURT: Objection sustained. It is hearsay.

19 MR. OLES: Thank you.

20 BY MR. OLES:

21 **Q.** Do you know whether or not the technicians were successful
22 in resolving whatever was the problem with the ballot
23 processing?

24 **A.** I do not know.

25 **Q.** Do you know whether or not there were any ballots that

1 remained uncounted on that occasion?

2 **A.** That remained uncounted or --

3 **Q.** Yes.

4 **A.** I have a recollection of ballots -- some ballots in
5 Gwinnett being uncounted at the time of certification. Whether
6 that was ultimately resolved, I just don't remember right now.

7 **Q.** Okay. Would it help to take a look at Number 14 of your
8 declaration?

9 **A.** Okay.

10 MR. BROWN: Your Honor, I would object to relevancy.
11 This has to do with -- mainly in the waste of time provision of
12 403. This has to do with scanners. And our scanner challenges
13 were thrown out by the Court, and they are no longer in the
14 case, and we're not seeking to replace the scanners. And
15 neither is Mr. Oles' client.

16 MR. BELINFANTE: Your Honor, our position is that
17 scanners do have some relevance to the case. But we would
18 object at least as to Paragraph 14, a discussion about it, as
19 it is hearsay and speculation of Mr. Hursti.

20 MR. OLES: Judge --

21 THE COURT: I don't have the document. I don't have
22 what we're talking about --

23 MR. OLES: I'm sorry.

24 THE COURT: -- so I'm at a loss. I just have been
25 listening. But that has its limits.

1 And you're talking about what?

2 MR. OLES: Paragraph 14, Judge.

3 THE COURT: Well, the problem with Paragraph 14 is
4 Ms. Marks is reporting on, for most of the paragraph, what
5 Mr. Hursti reported to her about his conversation with
6 Mr. Marino, a Dominion technical expert. So I don't think I
7 can allow that to come in. It is sort of double hearsay.

8 Then I -- you know, the last -- the last sentence can
9 come in. I estimated at the time -- at the time the election
10 was certified at least 1600 ballots remained uncounted.

11 That is the second to last.

12 The final one, does that address your concern,
13 Counsel?

14 MR. BELINFANTE: Yes, Your Honor.

15 THE COURT: All right.

16 BY MR. OLES:

17 **Q.** Ms. Marks, did you subsequently participate in a statewide
18 hand count audit?

19 **A.** I participated as an observer. I was not an auditor.

20 **Q.** Okay. Are you aware of whether or not that audit that you
21 observed discovered any more ballots than were originally
22 counted?

23 **A.** In Paragraph 15, that is what I report. And I probably
24 would not have remembered it had you not refreshed my
25 recollection with this. But yes. That seems correct.

1 Q. Okay. Do you recall how much the difference was in the
2 hand count from the original?

3 MR. BELINFANTE: Objection, Your Honor. Irrelevant.
4 The counties, even as this says, are performing the audit, not
5 the State.

6 THE COURT: All right. I just think we're going
7 pretty far afield.

8 MR. OLES: All right, Judge. I'll move along.

9 BY MR. OLES:

10 Q. Ms. Marks, are you aware in the manual count -- well, let
11 me back up a little bit.

12 Are you aware or do you recall that after the results were
13 certified of that election that the Secretary of State then
14 ordered a full manual count of the ballots in the presidential
15 contest?

16 A. That's not how I would phrase that.

17 Q. How would you phrase it?

18 A. After the initial certification of the machine count --
19 no. That is not right. I'm sorry. Let me rethink about this.

20 Prior to the initial certification of the machine count,
21 there was a hand count audit ordered. I would not necessarily
22 call that a hand count of the ballots. But a hand count audit
23 that was ordered by the Secretary.

24 Q. Okay. Do you recall whether or not there was an issue
25 with the same QR code signature mismatch in that audit that has

1 been testified to a number of times in this case?

2 MR. BELINFANTE: Objection. Vague. There's lots of
3 testimony about QR codes. I'm just not sure which one counsel
4 is talking about.

5 THE COURT: Do you want to clarify?

6 BY MR. OLES:

7 **Q.** Well, again, Ms. Marks, in your capacity as an observer of
8 the hand re-count, did you -- do you have knowledge of whether
9 or not there was an issue that arose involving the QR codes?

10 **A.** Let's break this apart a bit. There was not a hand
11 re-count.

12 **Q.** I'm sorry. As you described it, the hand count.

13 **A.** Okay. So do you mind repeating the question for me so I
14 try to answer it accurately?

15 **Q.** My question was: In the conduct of that hand count that
16 you observed, are you aware of whether or not there was an
17 issue or a problem that arose involving the QR code signature
18 matching?

19 **A.** There -- I have never heard anything that involved the QR
20 code with respect to that hand count audit because the QR code
21 was not even being looked at. I don't think it was a factor in
22 any considerations for that hand count audit.

23 **Q.** Okay. Let me walk you forward a little bit. Were you
24 involved in either monitoring or auditing the Gwinnett County
25 2022 primary?

1 MR. BELINFANTE: Objection, Your Honor. At this
2 point, I think it is getting well outside the scope of the
3 examination that I provided of.

4 THE COURT: I think that is so as well. If there is
5 something that is within the scope or at least somewhat related
6 to it -- but you're going into, now, different election --
7 elections.

8 So if you think you're going to ask this and you
9 think it is proper rebuttal testimony, then you could call the
10 witness as rebuttal. I don't know what it is rebuttal to.

11 MR. OLES: Well, the only thing I was trying to
12 accomplish here, Judge, the QR code signature mismatch error
13 has come up a number of times within this trial. I do believe
14 it fits within the area of the activity that Ms. Marks has
15 described that the organization has engaged in.

16 And it also falls within the definition of the
17 Dominion BMD system as defined both in Your Honor's order on
18 summary judgment as well as the pretrial order.

19 THE COURT: I didn't hear you asking about the QR
20 code in this context.

21 MR. OLES: Okay.

22 THE COURT: Restate your question.

23 MR. OLES: Thank you.

24 BY MR. OLES:

25 Q. My question was to you, Ms. Marks: Walking forward to the

1 Gwinnett County 2022 primary, were you involved in that?

2 **A.** I have observed so many elections. I don't remember.
3 Perhaps you could refresh my recollection on this. I just
4 don't recall at the moment.

5 **Q.** Okay.

6 Well, perhaps that one is not as clear as I would hope.

7 MR. OLES: All right. Well, that will be all I have
8 for the witness, Judge.

9 THE COURT: Thank you very much.

10 May this witness be excused?

11 MR. BELINFANTE: I do have some follow-up questions,
12 Your Honor.

13 THE COURT: Okay. Could I clarify something before
14 I --

15 You proffered before the GBI investigation, and I --
16 since -- I don't understand exactly how the whole investigation
17 comes in. I can understand that you had every right to -- of
18 course, to examine the witness on her statements. And she
19 corrected one of them that was in this. But -- and that is
20 proper use of it. But I don't see how the rest of it gets in
21 as -- at this point.

22 MR. BELINFANTE: I'm sorry, Your Honor. You are
23 talking about the GBI?

24 THE COURT: Yes.

25 MR. BELINFANTE: Your Honor, we do not have an issue

1 limiting that to the pages that we put in front of Ms. Marks
2 and asked about. So it was a plaintiffs' document, and we were
3 honestly trying to avoid a --

4 THE COURT: I see.

5 MR. BROWN: How many pages is that?

6 MR. BELINFANTE: I think it is only two or three.

7 **(There was a brief pause in the proceedings.)**

8 THE COURT: I think we just need to make clear that
9 this is not a statement that was -- that she signed or
10 something like that, which she -- obviously -- this is
11 obviously a statement that somebody is summarizing --

12 MR. BROWN: Right, Your Honor. And there's --

13 THE COURT: -- if it comes in at all.

14 MR. BROWN: The paper is hearsay. And it is
15 reporting what -- well, anyway, the reliability of it I think
16 has been remarked upon by the witness, by the only witness that
17 has been here to talk about the GBI investigation.

18 They didn't call the GBI here. They didn't try to
19 get it in evidence. So all we have, all we know, is that the
20 report, to this extent -- and maybe not throughout. But in
21 particular this is not accurate.

22 MR. BELINFANTE: Your Honor, I would disagree with
23 that, because I asked the witness specifically when she found
24 something she thought was inaccurate what made it inaccurate or
25 what she recalled. And my recollection of the testimony is

1 that she could not recall. That is different from saying the
2 report says the light was green and the testimony is I said the
3 light was red.

4 MR. BROWN: The record will speak for itself. But
5 Mr. Belinfante is incorrect. She specifically refuted the
6 characterization of her statement in the GBI report. Very
7 credibly I might add.

8 MR. CROSS: Could I just add? It sounds like the
9 only two purposes for which this was offered was to refresh her
10 recollection or to impeach. Neither of those are the proper
11 basis to admit evidence. So if those are the two purposes, it
12 doesn't come in. And that seems to be the only purposes we
13 have heard.

14 THE COURT: Okay. Well, why don't you proceed and we
15 can discuss it when we are --

16 MR. BELINFANTE: Okay.

17 RECROSS-EXAMINATION

18 BY MR. BELINFANTE:

19 Q. Ms. Marks, this will be much shorter.

20 You testified earlier that you had concerns about your
21 personal safety and that of the members of the Coalition with
22 regards to Scott Hall.

23 Do you remember that?

24 A. I do.

25 Q. And that still did not cause you to contact law

1 enforcement. Is that your testimony today?

2 **A.** That is correct.

3 **Q.** Okay. You said also that you had hoped that the State
4 would do something once it heard the tape in Mr. Sterling's
5 February 2022 deposition.

6 Do you recall that?

7 **A.** Yes.

8 **Q.** If that was your hope, why didn't you produce it earlier
9 to the State so that it could have done something?

10 **A.** Certainly the State knew a whole lot more than I did about
11 all of the goings on in Coffee County.

12 **Q.** Is it your testimony that the State knew SullivanStrickler
13 came into Coffee County in January by February of 2022?

14 **A.** No.

15 **Q.** Okay. So they didn't know that.

16 All they knew was the Cyber Ninja card --

17 **(Unintelligible cross-talk)**

18 THE WITNESS: -- it's just not my testimony.

19 **(There was a brief pause in the proceedings.)**

20 BY MR. BELINFANTE:

21 **Q.** I'll end it at that. So they didn't know that; correct?

22 **A.** I didn't say that. I just said I did not know whether
23 they knew that or not.

24 **Q.** But you wanted the State to act; right? You wanted the
25 State to investigate what was happening in Coffee County?

1 **A.** Yes.

2 **Q.** Okay. And to that point, Ms. Marks, you would agree with
3 me that when the State conducts an investigation into
4 particularly alleged criminal behavior, it is not limited to
5 what outside counsel does in civil litigation? Do you
6 understand what I'm asking?

7 **A.** I don't really understand what you are asking.

8 **Q.** That's fair.

9 You had a series of questions with Ms. Brown -- or
10 Mr. Brown, sorry -- Mr. Brown about the State's questioning of
11 witnesses during Eric Chaney's deposition about the
12 State's issuing of subpoenas and things of that nature.

13 Do you recall that?

14 **A.** Yes.

15 **Q.** Okay. You would agree with me that when the State of
16 Georgia, whether it is the Georgia Bureau of Investigation or
17 the Secretary of State's office, conducts what is at least a
18 quasi criminal investigation it is not acting solely through
19 outside civil counsel?

20 Would you agree with that?

21 MR. CROSS: Objection. She can't -- how could she
22 know the answer to that? That is a legal conclusion.

23 MR. BELINFANTE: That's what she testified to
24 earlier.

25 MR. CROSS: I'll withdraw the objection. I'm not --

1 I'll withdraw.

2 BY MR. BELINFANTE:

3 **Q.** Let me ask it this way. Ms. Marks, you would agree with
4 me that --

5 THE COURT: I think it is too -- I mean, that is a
6 legal question for her.

7 MR. BELINFANTE: That's fine.

8 BY MR. BELINFANTE:

9 **Q.** Ms. Marks, you would agree with me, though, that the
10 State's efforts to investigate Coffee County are not done
11 solely through the guise of this litigation; is that fair?

12 **A.** They shouldn't be.

13 **Q.** Right. And that is why -- and you talked to the GBI;
14 correct?

15 **A.** I did talk to the GBI.

16 **Q.** And you're aware that the State referred the matter to the
17 Georgia Bureau of Investigation as well; correct?

18 I'm sorry. That the Secretary of State's office referred
19 the matter to the Georgia Bureau of Investigation?

20 **A.** It has always been a little confusing to me as to whether
21 it was the Secretary of State or the State Election Board that
22 referred the matter to the Georgia Bureau of Investigation and
23 under whose auspices the investigation was to take place.

24 **Q.** Well, both are defendants in this case, the Secretary and
25 the SEB.

1 **A.** Right. But that is not what you asked me.

2 **Q.** That's fine.

3 Ms. Marks, if you could turn to Coalition Plaintiffs'
4 Exhibit 2, which is your email to Judge Duffey from November 26
5 of 2022.

6 **A.** All right. Just a moment.

7 Okay.

8 **Q.** On the second page -- well, third full page of that
9 document, at the bottom it says Page 3 of 4, is your letter to
10 the members of the State Election Board.

11 Do you see that?

12 **A.** I do.

13 **Q.** Now, you write in the second paragraph that meaningful
14 post election audits are essential as one partial and
15 incomplete risk mitigation measure for the identified
16 vulnerabilities in the BMD system as advised by CISA in their
17 June 3rd, 2020 advisory.

18 Do you see that?

19 **A.** Yes.

20 **Q.** But it is your position and the Coalition's position that
21 you can't conduct meaningful audits on the BMDs, isn't it?

22 **A.** You cannot conduct meaningful audits that confirm the
23 voter's will in terms of the election outcome.

24 **Q.** So there is nothing that the State Election Board could do
25 anyway to satisfy the Coalition's concerns about audits because

1 BMDs are used in Georgia elections; isn't that right?

2 **A.** No. That is --

3 THE COURT: I'm sorry. You are talking too fast for
4 me to understand.

5 MR. BELINFANTE: Sorry, Your Honor.

6 THE COURT: Thank you. I didn't even get the
7 question.

8 BY MR. BELINFANTE:

9 **Q.** So if the -- and I'll rephrase the question too.

10 If the State Election Board ordered audits in an election
11 that uses BMDs, it is the Coalition's position that those
12 audits cannot be meaningful because the BMDs are, in your
13 words, inherently unauditable; isn't that right?

14 MR. BROWN: Objection. Vague. Meaningful.

15 MR. BELINFANTE: Well, it is her word, Mr. Brown.
16 First word, second paragraph.

17 THE WITNESS: You are asking me whether -- if the
18 State Election Board ordered audits? Well, this letter is not
19 about the State Election Board ordering audits.

20 BY MR. BELINFANTE:

21 **Q.** My question, though, is the State Election Board could not
22 order any type of, in your words, meaningful post election
23 audits in any election in Georgia where BMDs are utilized;
24 isn't that right?

25 **A.** Are you asking me about the State Election Board's powers,

1 or are you asking me about whether or not risk-limiting audits
2 can be effective for ballot-marking devices?

3 **Q.** I'm asking you whether there could be a meaningful audit
4 of an election involving ballot-marking devices as Georgia
5 utilizes today?

6 **A.** Not -- such an audit of election outcomes for
7 BMD-conducted elections cannot be meaningful.

8 **Q.** Okay. And there could be no audit to give -- in an
9 election using ballot-marking devices to answer the question of
10 whether a voter's vote was counted as cast -- isn't that
11 right? -- according to the Coalition?

12 MR. CROSS: Objection, Your Honor. Vague.

13 Are we -- are we including accessibility or not?

14 MR. BELINFANTE: Not -- I'm including anytime the BMD
15 is used, like Dr. Stark said.

16 THE WITNESS: If I'm understanding your question
17 correctly -- and I'm not sure that I am --

18 THE COURT: How do you understand the question?

19 THE WITNESS: I think he is asking me whether or not
20 audits determine whether an individual's vote is counted as
21 cast.

22 MR. BELINFANTE: What I --

23 THE COURT: Is that --

24 MR. BELINFANTE: Go ahead.

25

1 BY MR. BELINFANTE:

2 **Q.** What I'm asking you, Ms. Marks, is: In an election where
3 BMDs are utilized, is there any audit that could address the
4 Coalition's concerns that its members' votes are not counted as
5 cast?

6 **A.** There is a lot wrapped up in that question. But in
7 general, a risk-limiting audit of a -- an election run
8 primarily by ballot-marking devices cannot confirm the outcome.
9 But no audit is going to be able to determine that an
10 individual's vote was counted at cast.

11 **Q.** All right. Ms. Marks, could you turn to Curling
12 Plaintiffs' Exhibit Number 5, please, the September 5, 2023,
13 letter to the State Election Board.

14 **A.** I have it now.

15 **Q.** Okay. Could you turn to Page 4 of that document.

16 **A.** Yes, I do have it.

17 **Q.** The second paragraph says the Secretary of State has
18 disingenuously attempted to rebut the Halderman report and the
19 CISA findings by promoting the discredited Dominion sponsored
20 MITRE report with Georgia local officials. Those local
21 officials have limited information on the failings of the
22 promoted MITRE report, the fact that cybersecurity scientists
23 have called for the retraction of that report and the
24 concerning results of scientists meetings with MITRE
25 representatives to cover the many errors and false assumptions

1 in that report.

2 Do you see that?

3 **A.** I see that.

4 **Q.** Have you read the MITRE report from July 20, 2022?

5 **A.** Yes.

6 **Q.** Okay.

7 MR. CROSS: Objection, Your Honor. There is a ruling
8 on this.

9 MR. BELINFANTE: Your Honor, they have opened the
10 door wide open.

11 MR. CROSS: How so?

12 MR. BELINFANTE: You have put in a document where the
13 witness is talking about her communications to the SEB about
14 the MITRE report. She is criticizing the MITRE report. She's
15 now testified she read it. I can -- I should be able to ask
16 her about her position on the MITRE report, which would
17 require --

18 THE COURT: I'm -- this is -- just at this point
19 we're not going to go that far. I mean, the --

20 MR. CROSS: What document are you talking about,
21 Josh? I don't know if I have it.

22 MR. BELINFANTE: 767. Oh, I'm sorry, the one that
23 I'm quoting is Curling 5.

24 THE COURT: We are so in the weeds at this juncture
25 that I can't even track your own -- the exhibits. So if you

1 want to show it to me, but I'm really not inclined. If you
2 want to show -- if somebody can give me another copy, I'll be
3 happy to look at it.

4 MR. BELINFANTE: Your Honor, I'm happy to show you
5 mine. It is just highlighted, the piece here.

6 THE COURT: That's all right. If you don't mind.
7 Otherwise have somebody else give me theirs.

8 MR. CROSS: And, Your Honor, as I understand it, this
9 was offered only to go to the issue of diversion of resources.
10 I mean, I would ask Mr. Brown if we could just redact any
11 reference to MITRE. Certainly it would be a heck of a gotcha
12 if that was opening the door because I would have objected to
13 this document.

14 MR. BELINFANTE: Your Honor --

15 MR. CROSS: It was not offered for that purpose, and
16 no one mentioned it for that purpose.

17 MR. BROWN: And we --

18 MR. BELINFANTE: To that point --

19 THE COURT: All right. I'm not allowing it. This
20 is -- please redact the reference to the MITRE report. This is
21 just a true diversion. This has only to -- you offered it for
22 diversion of resources. It is not an invitation to go into her
23 discussions with MITRE.

24 BY MR. BELINFANTE:

25 Q. Could you look at Coalition Plaintiffs' Exhibit 12,

1 please, the transcript in front of Judge Batten.

2 A. Just a moment.

3 You said Page 12?

4 Q. Coalition Plaintiffs' Exhibit 12.

5 A. Okay.

6 Q. The transcript before Judge Batten.

7 A. I do have that.

8 Q. Okay. This was filed in this court on November 30th,
9 2020?

10 THE COURT: I'm sorry. Just one second.

11 BY MR. BELINFANTE:

12 Q. That is when it was filed in Batten. Sorry.

13 **(There was a brief pause in the proceedings.)**

14 THE COURT: I'm sorry.

15 MR. CROSS: Your Honor, before we move on, just to
16 kind of perfect the record, on Coalition 5, I think just to be
17 safe, we would just ask that this be withdrawn entirely in
18 fairness to the State, because I don't think anybody meant to
19 open that door. Rather than redact it, if the Coalition has no
20 objection, just withdraw it.

21 MR. BROWN: We will withdraw it, Your Honor. It was
22 submitted simply with the other documents to show diversion of
23 resources.

24 THE COURT: All right. It is withdrawn.

25 MR. CROSS: Thank you.

1 BY MR. BELINFANTE:

2 Q. Ms. Marks, do you have Coalition Plaintiffs' 12, the
3 transcript in front of Judge Batten -- or of the hearing before
4 Judge Batten in front of you?

5 A. I do have it in front of me.

6 Q. Do you know when you learned of this transcript?

7 A. No, I don't know when I learned of the transcript.
8 It is pretty old.

9 Q. You were aware, though, of the *Pearson v. Kemp* or what we
10 could call the Kraken case, weren't you?

11 A. When?

12 Q. When it was pending in November of 2020.

13 A. I was generally aware of it. I wasn't conversant with
14 every claim.

15 Q. Okay. Do you have a disagreement with Mr. Willard's
16 statement on Page 13 that it poses a security risk for
17 Ms. Powell's minions to go in and image everything, download
18 the software and figure out for future elections a way to hack
19 so that their preferred candidates can win?

20 A. I completely agree with his statement and completely agree
21 that it is -- it would be giving the proverbial keys to the
22 software kingdom to those sectors.

23 Q. And did you agree with that statement on March 7, 2021?

24 A. Yes. Certainly.

25 Q. Ms. Marks, do you recall whether the hearing in the

1 *Pearson* case -- did you -- well, let me ask this.

2 Did you listen or otherwise observe the hearing before
3 Judge Batten on the preliminary injunction in the *Pearson* case?

4 **A.** I can't recall whether I -- I think it was maybe a Zoom or
5 telephonic hearing. And I can't recall whether I listened to
6 it live or heard about it later. I just don't recall right
7 now.

8 **Q.** Okay. Do you recall Ms. Powell arguing that the machines
9 were vulnerable because of the study of Dr. Halderman as the
10 basis to proceed in the *Pearson* case?

11 **A.** If you're asking if I recall that that is what she was
12 arguing that night, I don't. But generally she was making any
13 kind of argument she could about reasons that she wanted access
14 to the system.

15 **Q.** Okay. Last set of questions, Ms. Marks.

16 You were --

17 MR. CROSS: Your Honor, I'll just object to that.
18 This was in November of 2020. The report didn't come out until
19 2021. So I'm not sure what he's referring to.

20 MR. BELINFANTE: I can quote the order if you would
21 like or the transcript.

22 MR. CROSS: You are reading the transcript?

23 MR. BELINFANTE: Yes.

24 MR. CROSS: What portion?

25 THE COURT: Are we just going back to what she

1 already answered?

2 MR. BELINFANTE: I think so, Your Honor.

3 THE COURT: Are you objecting -- since she's already
4 answered, are you wanting to strike the answer or you want to
5 object the question? I mean, she's satisfactorily answered it.

6 MR. BELINFANTE: And if --

7 MR. CROSS: Yes, I was objecting here because I
8 thought she was confused. He referred to a report. There was
9 no -- I just don't know what he's talking about. I think they
10 are missing each other, so I would move to strike the answer
11 as -- and the question.

12 MR. BELINFANTE: Let me -- I'll -- before the Court
13 rules on that, if I could ask another question. If it resolves
14 it, then we can strike the other.

15 THE COURT: All right.

16 BY MR. BELINFANTE:

17 Q. Ms. Marks, are you aware that Sidney Powell quoted the
18 work of Dr. Halderman, not necessarily the report that
19 Mr. Cross is talking about -- but the concerns that
20 Dr. Halderman had at least in December of 2020 about the
21 Dominion BMDs as a basis for her argument before Judge Batten?

22 MR. BROWN: Your Honor, I'll object to relevancy of
23 this line of questions. The --

24 MR. BELINFANTE: Mr. -- go ahead. I thought you were
25 done.

1 MR. BROWN: I just don't see the connection between
2 any of this.

3 THE COURT: So what did she cite?

4 MR. BELINFANTE: She cites portions of the Court's
5 order on the preliminary injunction, which at that point was
6 citing to the studies that were conducted at that time on the
7 Dominion machines.

8 THE COURT: Because, let me just say, I read a
9 number -- almost all the filings. They often cut and paste the
10 orders -- my orders, without regard to whether it was accurate
11 or not or confusing or misleading, and I am concerned about
12 either -- both the fairness and the reliability of going into
13 what Ms. Powell may have cited to Judge Batten in 2020 in that
14 connection or in a brief. Because there was so much that was
15 inaccurate and so much that was cut and paste.

16 It was -- now, I can't tell you as to -- and I'm not
17 going to go back and be a witness in this proceeding about that
18 either. But I observed it, and I read everything that was
19 filed in that time, whatever court it was, because people were
20 attaching all sorts of things.

21 And I was concerned, of course, about the integrity
22 of this Court's rulings. But it takes it to a different level
23 of concern when you are asking them what did you think to this
24 witness about Ms. Powell's quoting this.

25 And it just -- it is not really productive in terms

1 of your examination at least. And maybe you'll -- you're
2 making a record. But I don't think it is persuasive to me. I
3 understand.

4 I think the witness understands the point you're
5 getting to. And you can ask her -- if you want to ask her what
6 is the difference between your position and Ms. Powell's, you
7 can do that. But to be relying on bringing the Court into it,
8 which I don't think is your intent in any way, but that is what
9 inevitably --

10 MR. BELINFANTE: And if I may, Your Honor, just to
11 address that and perhaps even offer a proffer if we could do it
12 that way.

13 My point is not to draw the Court into it. My point
14 is to provide evidence that the witness was on notice at the
15 time she saw the proceeding before Judge Batten.

16 THE COURT: You mean when she watched the videotape,
17 if she watched it.

18 MR. BELINFANTE: Yeah. And I can clear that up. I
19 thought it was contemporaneous. But at the time of that she
20 was on notice that Ms. Powell had cited the concerns -- and
21 again, the quoted part is the cybersecurity expert's
22 convincingly present evidence.

23 They have now introduced evidence of Ms. Powell
24 trying to get to Coffee County. And so if the witness knew at
25 that time of the link between Sidney Powell and Coffee County

1 and then received a phone call, that speaks to several things
2 which I would rather not do in front of the witness, but I
3 think the Court can see where I'm going with it.

4 That is the point of it. It speaks to the
5 reasonableness of -- or not even the reasonableness, the
6 conduct of the witness given particularly that they have
7 introduced the motions hearing before Judge Batten themselves.

8 MR. BROWN: Your Honor, the conduct of the witness is
9 not at issue in the case. It is the conduct not of my client
10 but of Mr. Belinfante's client that is at issue in this case.
11 And -- that is the first objection.

12 The second objection is that the State also knew. So
13 if he's trying to compare relative knowledge, the State was in
14 that proceeding. In fact, counsel was here that was in that
15 proceeding. They knew also. So I don't see the relevance of
16 it.

17 MR. CROSS: Your Honor, I wonder if an easier way to
18 deal with this is, it may be plaintiffs are willing to
19 stipulate that it was common knowledge at this time, publicly
20 known, that Ms. Powell had made claims about the reliability of
21 the outcome of the November 2020 election and had cited some
22 things from court rulings and Dr. Halderman. That is not
23 disputed by anybody.

24 And if we want to, I think we would stipulate that
25 that was common knowledge and that was public.

1 MR. BELINFANTE: I think there's two issues here,
2 Your Honor, that have not been addressed yet. I'm not trying
3 to belabor the point. I'm truly not.

4 One, the Coalition plaintiffs, as well as the Curling
5 plaintiffs -- but this is a Coalition plaintiffs issue -- are
6 coming to the Court in equity. They are asking the Court to
7 enjoin the State in part because they claim that the State
8 acted slowly, inappropriately and wrongly as it relates to
9 Coffee County.

10 Any person coming to the court in equity must have
11 clean hands. The Eleventh Circuit has case law on this
12 involving federal common law.

13 The test is did the defendant conduct themselves or
14 did the party seeking equity come to the court and do something
15 that hindered or prevented the defendant from doing something in
16 the very case. This evidence is relevant to that.

17 MR. CROSS: Your Honor, I guess my only response to
18 that is this is the first I can recall in six years of a clean
19 hands defense. And to raise that with the penultimate witness,
20 this is waived. There was no discussion of this in any
21 pretrial filings, in any pretrial conference. If we were going
22 to have put on a case dealing with clean hands, we needed to
23 hear that before now. So if that is the only relevance, then
24 this is out.

25 MR. BELINFANTE: Well, it is not the only relevance.

1 It also speaks to if Ms. Marks is going to -- as she has
2 testified -- again, she has testified that she did not believe
3 and she thought Mr. Hall's statements were incredible or
4 lacking credibility.

5 Plaintiffs have also argued that the State should
6 have known all of this just from a card being left on a desk.

7 THE COURT: No, not just from a card being left on a
8 desk. No. Come on.

9 MR. BELINFANTE: At the time --

10 THE COURT: Dominion sent out a notice itself that --
11 about the Cyber Ninjas at the same time. There were other
12 issues. So, I mean, I'm not saying -- trying to reach any
13 final conclusion here. But that is a little bit of an
14 exaggeration.

15 MR. BELINFANTE: At the time the testimony of the
16 State's investigator was that he did not --

17 THE COURT: All right. I'm not going back to that.
18 We're dealing with this witness. And, you know, you can argue
19 all you want and you will, I'm sure, enormously persuasively
20 when we get to closing arguments about exactly that. But this
21 is not the time.

22 MR. BELINFANTE: All right. Understood, Your Honor.

23 THE COURT: Okay.

24 BY MR. BELINFANTE:

25 Q. Ms. Marks, do you recall being asked questions about your

1 deposition as a 30(b)(6) witness for the Coalition on March 17,
2 2022?

3 **A.** Yes.

4 **Q.** And do you recall being asked by Mr. Tyson about a request
5 for admission Number 12 that says you admit that you have no
6 evidence that any component of the election system was actually
7 hacked prior to or during the election of November 3rd -- and
8 it is 2020 -- although it's not in the transcript as that --
9 and that was denied?

10 Do you recall that question?

11 **A.** Generally, yes. Not so specifically, but ...

12 MR. BELINFANTE: May I approach the witness, Your
13 Honor?

14 THE COURT: Are we going into a whole new subject?

15 MR. BELINFANTE: It is literally like one question
16 and then my examination will be done.

17 THE COURT: That's fine.

18 MR. BELINFANTE: I can't say one question, just
19 because foundation and all that stuff.

20 THE COURT: All right.

21 BY MR. BELINFANTE:

22 **Q.** Could you turn to Page 200 --

23 THE COURT: That is a lawyer thinking.

24 BY MR. BELINFANTE:

25 **Q.** Can you turn to Page 250, please, Ms. Marks?

1 **A.** I'm sorry. 250?

2 **Q.** Yes, ma'am. You probably want to start on 249. But the
3 part -- what I would like to do is, you testified -- what I
4 would like you to do is take a look at your statement,
5 paragraph beginning on Page 249, Line 23 running through
6 Page 250, Line 16. And then I'll ask you a question about it.

7 **A.** Okay.

8 **Q.** Do you recall testifying in your 30(b)(6) deposition about
9 unauthorized access in Coffee County in November of 2020?

10 **A.** Yes.

11 **Q.** Okay. And you would agree with me that SullivanStrickler
12 gained unauthorized access in January of 2021?

13 **A.** Correct.

14 **Q.** Okay.

15 MR. BELINFANTE: No further questions, Your Honor.
16 Thank you.

17 THE COURT: All right. Why don't we -- you think
18 you're going -- if you're going to have any further
19 questions --

20 MR. BROWN: No more questions, Your Honor.

21 MR. CROSS: No, I don't have any questions.

22 THE COURT: I want to make sure we ended up where we
23 needed to on the --

24 MR. BELINFANTE: Your Honor, I'm sorry. Mr. Miller
25 pointed out one thing. And I don't think there will be a

1 problem with this.

2 Given that the Exhibit 5, the one that references the
3 MITRE report has been withdrawn, we would move to strike all of
4 the testimony about that exhibit as well.

5 MR. BROWN: No objection, Your Honor.

6 THE COURT: All right. I need to go back and read
7 where -- about the -- I think you got -- I want to just confirm
8 where we were on the FBI report.

9 MR. BELINFANTE: GBI.

10 THE COURT: GBI. Excuse me.

11 So the rest of the report can't come in. You got --
12 questioned her about the one thing that that you thought was
13 inconsistent. She said -- you know, you-all have different
14 views of what -- of what she acknowledged. And it is in the
15 transcript. So I don't know why the statement needs to come in
16 because it is still hearsay.

17 MR. BELINFANTE: I think the issue, Your Honor --
18 and, again, I don't recall the specific questions. There may
19 have been questions where I said you told the GBI something or
20 you are aware the GBI did something this way. So, you know --

21 THE COURT: You-all can look at it again. And I will
22 too.

23 All right. If we have to have her back here for
24 that, we will.

25 MR. BELINFANTE: All right. Thank you, Your Honor.

1 THE COURT: All right. Can this witness be excused?
2 And we'll just revisit the report again once we're a
3 little fresh.

4 MR. BELINFANTE: Sure.

5 THE COURT: Thank you very much.

6 THE WITNESS: Thank you.

7 THE COURT: Are you going to proceed with
8 Mr. Sterling at this time, or do you have another witness?

9 MR. BELINFANTE: Mr. Sterling is our last witness.

10 THE COURT: Okay.

11 MR. BELINFANTE: He is here.

12 THE COURT: Do you want to take a five-minute break
13 before you start with Mr. Sterling?

14 MR. BELINFANTE: That would be great.

15 THE COURT: All right.

16 **(A brief break was taken at 3:57 PM.)**

17 MR. BROWN: Your Honor, before Mr. Sterling
18 testifies, I wanted to bring to the Court's attention
19 Mr. Miller and I have spoken about an issue that the Court has
20 raised on three occasions with witnesses, and we wanted to
21 address it because it seemed to be understandably an issue of
22 concern to the Court.

23 And the issue is whether in the sampling of the
24 RLAs -- in the sampling done to do the RLAs, that any account
25 was taken -- whether account was taken in the demographics,

1 whether racial or geographic sampling, and whether that was an
2 issue that either party thought was a concern.

3 Our joint position is that it is not an issue by
4 either party. I -- and we can present this to you however you
5 would be comfortable. But I have spoken with Mr. -- I have
6 communicated with Mr. Stark and he confirmed that the way that
7 the RLA is -- the way the math on the RLA is done is that the
8 sampling is strong -- the math is strong enough that you do not
9 need any kind of balancing for demographics or for any other
10 subcategory of the population.

11 And to do so would be very hard for an election
12 official to do in advance of the RLA. And so it is not taken
13 into account, and it is deliberately not taken into account.

14 THE COURT: In advance of the RLA?

15 MR. BROWN: Well, the RLA takes a sampling of the
16 ballots.

17 THE COURT: Right.

18 MR. BROWN: But in the sampling, the selection of
19 ballots does not take into account demographics. And the math
20 is strong enough to overtake whatever sampling errors there
21 might be by doing it that way.

22 THE COURT: That's fine.

23 MR. BROWN: Thank you, Your Honor.

24 THE COURT: And that's helpful. I just -- I think if
25 we were going to introduce a whole -- that issue, though, and

1 whatever else they did, it would have been helpful for me to
2 understand that you were -- that there were a number of new
3 things coming in that I never knew he was going to be
4 testifying about. But that's fine. You have addressed that.

5 MR. MILLER: We just wanted to clarify.

6 THE COURT: That's great.

7 MR. MILLER: That is not part of the Coalition
8 plaintiffs' claims.

9 THE COURT: No. No. And that was only my concern as
10 to it being materially more or different than what -- he is an
11 expert and identified as an expert. And all I knew of his
12 testifying about is what he had testified in the past he had
13 two affidavits, all that were -- were -- preceded this, and
14 were in like in '20 and -- maybe '20 and '21. Maybe -- they
15 might have both been from '20. And there had been no other
16 update. That is what this all was about.

17 Anyway, that is helpful. Thank you very much.

18 MR. BELINFANTE: Your Honor, as you probably have
19 gathered, the State is calling Gabriel Sterling.

20 THE COURT: Yes.

21 Good afternoon again. Remember you are under oath
22 still.

23 THE WITNESS: Yes, Your Honor.

24 Whereupon,

25 GABRIEL STERLING,

1 after having been previously duly sworn, testified as
2 follows:

3 DIRECT EXAMINATION

4 BY MR. BELINFANTE:

5 **Q.** Good afternoon, Mr. Sterling.

6 While you were on cross-examination you were asked some
7 questions about your biography, but I wanted to fill it out a
8 little bit more.

9 Could you tell the Court: You have a college degree?

10 **A.** They're in political science from the University of
11 Georgia.

12 **Q.** And after graduating from college, what did you do for
13 employment?

14 **A.** Sort of a crossover, because even while I was in college,
15 I was involved in running political campaigns. So starting in
16 1990, I did several campaigns. Actually '89 I started. Then
17 '90. Then in my final -- my senior year of college, I left for
18 a while to become the political director for the Bush/Quayle
19 campaign for Georgia in the primary. Went back to college for
20 a quarter, because we were on quarters back then.

21 THE COURT: Went back to what?

22 THE WITNESS: College.

23 And then went back again for the general election,
24 the same role as political director.

25 Then from there was -- did coastal work for the

1 Coverdell runoff campaign.

2 And immediately upon leaving college, even before I
3 left, I began as the campaign manager for Charlie Norwood in
4 the Tenth District of Georgia. District that ran from Augusta
5 all the way over to Gwinnett through Athens where I was
6 attending the University. And he won -- in a surprise, won the
7 primary in a runoff. And then he won a large margin of victory
8 in the '94 sweep. And the first Republican ever to win there.

9 From there went to DC. And become a story of legend
10 to a degree. I turned down the chief of staff job because I
11 told Dr. Norwood that I could run a campaign all day long but I
12 didn't know anything about running a political -- a
13 Congressional office.

14 And I went from being the number one person there,
15 assuming I would be number two, no, I went down to number four,
16 the legislative assistant. And that chafed a little bit. So I
17 stayed there through April -- April or May of '96. Then came
18 back into political consulting again. Ran the only winning
19 Republican campaign for a State House seat that year in Barrow
20 County for Warren Massey in a race that was eventually decided
21 in a re-count by 14 votes.

22 THE COURT: You're a specialist then.

23 THE WITNESS: To a degree. Yes, Your Honor.

24 Then I left political consulting directly for a
25 couple of years and went into business with my father in

1 both -- in business consulting. And we ended up having equity
2 position in a chemical company and -- in Jacksonville, Florida,
3 or just south of Jacksonville, Florida. And I ended up taking
4 a role there for some period of time.

5 And then the owner of the company -- we had a parting
6 of the ways of the minds. And so that ended in the early
7 2000s. And I started my own chemical manufacturing company
8 based out of Alpharetta.

9 And around 2004, I got back into political consulting
10 in part because in 2005 I was the co-chairman of the campaign
11 for Sandy Springs to become a city.

12 And we ended up winning that race with 96 percent of
13 the vote, I believe, in Sandy Springs. And then I became sort
14 of a specialist on helping to make new cities. Ran the
15 campaigns for Johns Creek. The firm did Milton, Brookhaven.
16 We didn't do Dunwoody. I think we had something to do with
17 Chattahoochee Hills. But you get the basic idea.

18 And then I worked at a firm called Landmark
19 Communications for several years after that where we worked on
20 statewide campaigns all the way down to city level campaigns.

21 So I have essentially worked in almost every level of
22 campaign you can work with, mainly within the State of Georgia.

23 And in 2019, once the -- well, once Secretary-elect
24 Raffensperger -- I was part of the transition team. And it was
25 sort of a Dick Cheney moment where they decided to -- I was on

1 a transition team. They decided to make me the chief operating
2 officer within the organization. That was the job I had pretty
3 much since January of '19.

4 So sort of a compressed bio, but you get the basics.

5 BY MR. BELINFANTE:

6 **Q.** Understood.

7 And one thing you left out, have you, yourself, been an
8 elected official within the State of Georgia?

9 **A.** Yes. I was elected March 15, 2011, to Sandy Springs city
10 council in District 4. And I served there through January of
11 2018.

12 **Q.** Okay. Focusing now on your role with Secretary
13 Raffensperger since I believe you said 2019, do you attend any
14 conferences with other secretaries of state across the country?

15 **A.** Several. We -- traditionally we go to the National
16 Association of Secretary of States' Conference, which they have
17 a winter conference and a summer conference. Those -- the
18 winter conferences are always in Washington, D.C.

19 And they are done -- for the winter conferences, they are
20 done in conjunction with the National Association of State
21 Elections Directors. So the vendors kind of cross there, and
22 we have a lot of interaction with other elections officials
23 beyond just the Secretary of States themselves.

24 Then because of what has happened through 2020 and 2022, I
25 have attended numerous other county elections conferences

1 throughout the United States, California, Idaho, Rhode
2 Island -- let's see -- it has been a few that I go to speak to.
3 **Q.** And at those conferences are there panels or presentations
4 on cybersecurity?
5 **A.** Essentially I can't remember one that I have been to where
6 there hasn't been discussion on cybersecurity.
7 **Q.** Mr. Sterling, are you familiar with an organization
8 referred to as GAVREO?
9 **A.** GAVREO?
10 **Q.** GAVREO. Thank you.
11 **A.** G-A-V-R-E-O.
12 **Q.** That's it.
13 **A.** The Georgia Association of Voting Registrars and Elections
14 Officials, yes.
15 **Q.** What is that?
16 **A.** That is essentially the association of the individuals who
17 run elections in the State. That goes from the superintendents
18 which are generally elections boards, but also probate judges,
19 and then there are elections directors and staffs.
20 We have, I think, the second largest group of that in the
21 United States. Texas being the largest because they have a few
22 more counties than we do. But we have one of the largest ones
23 in the United States.
24 **Q.** And when you say those officials, are those county
25 officials or state officials?

1 **A.** They are county officials who are members of the
2 organization, but they put on the conference in conjunction
3 with the Secretary's office because of training and essentially
4 how we have to work together on these items.

5 **Q.** Have you attended any of the training sessions?

6 **A.** Yes.

7 **Q.** Were you involved in the deployment of the Dominion voting
8 equipment in Georgia?

9 **A.** Yes, sir.

10 **Q.** What was your involvement?

11 **A.** I was essentially the project manager. I was the voting
12 system implementation manager for the voting system of Georgia.

13 **Q.** Are you familiar with House Bill 316 from the 2019
14 legislative session?

15 **A.** Of course.

16 **Q.** Did House Bill 316 impose any deadlines on the Secretary's
17 office regarding the deployment of voting equipment?

18 **A.** We needed to have it in place by the presidential
19 preference primary, which was set for March of 2020.

20 **Q.** Okay. And roughly when, if you recall, did House Bill 316
21 become law?

22 **A.** It would have been signed by Governor Kemp in March or
23 April. But we actually put the request for proposal into the
24 field not upon his signature but upon the passage by the Senate
25 of the final version of the bill to match the House knowing

1 that the Governor was going to sign it because we had such a
2 limited time to do the procurement process and do the
3 deployment after that.

4 **Q.** Roughly how long did you have to procure and deploy the
5 new Dominion equipment?

6 **A.** We had to deploy and train. We couldn't just have it
7 there on presidential preference election day. So in real life
8 ten months, give or take.

9 **Q.** And looking ahead to 2020, anything make that more
10 challenging come about February or March?

11 **A.** Well, here is the good part about in terms of the
12 deploying side. We got the first pieces of equipment in --
13 starting in October of 2019. And then we had an internal goal
14 in my mind of February 1st, but we actually got the final truck
15 rolled out of the initial purchase on February 14th.

16 About three weeks -- well, during that time we started
17 hearing something about a virus hitting in Asia. And the PPP,
18 the early voting began in February. And the second week of
19 that was when the health care emergency was declared by both
20 Governor Kemp and President Trump.

21 **Q.** Just for the record, when you say PPP, what do you mean?

22 **A.** Presidential preference primary.

23 **Q.** Were you able to meet the deadline imposed by the General
24 Assembly?

25 **A.** Yes.

1 Q. Okay. Mr. Sterling, I would now like to draw your
2 attention to the 2020 general election in November.

3 Do you recall after that election questions about the
4 integrity of Georgia's election process?

5 A. Yes, sir.

6 Q. What were the nature of those criticisms or attacks
7 depending on --

8 A. They were various and sundry. I mean, all the way from
9 stolen absentee ballots to machines flipping votes, algorithms,
10 the fractional votes. I mean, the more farcical ones of
11 transmitting votes to Germany and Spain and Italian space
12 lasers sending them back through the thermostats on machines.
13 Down to people taking handfuls and armfuls of ballots into the
14 concession area in Fulton County to change them. Let's see.
15 Suitcases full of ballots coming out from underneath.

16 I could go on for several hours, but I think the general
17 people basically understand the level and nature of most of
18 those.

19 Q. Did I hear you correctly that the criticisms were both
20 about the voting equipment, the technology, but also paper
21 ballots?

22 MR. CROSS: Objection. Leading. And inconsistent
23 with what he just said.

24 BY MR. BELINFANTE:

25 Q. Were the attacks after the November 2020 election limited

1 to the voter -- or the voting technology, the new Dominion
2 system?

3 **A.** No. And as I said earlier, ballots under the -- being
4 brought out from underneath, those were hand-marked paper
5 ballots.

6 In the Fulton County case where there was claim they were
7 taken into the lunch area, also hand-marked paper ballots. So
8 it was across the board of every single type, because that was
9 the situation at the time.

10 **Q.** Were absentee ballots -- or was there anything unique
11 about the 2020 election and the use of absentee ballots?

12 **A.** In the nature of the way they were used, they were
13 consistent with the existing law. The situation was --
14 historically in Georgia we had been an in-person voting state.

15 So one of the things, we had a decision in -- I want to
16 say late March to use the existing laws and send out prefilled
17 with a barcode on them to match the voter's name and pull them
18 directly up into the screen absentee ballot request forms
19 because we were a no excuse absentee state. And we still are.

20 And we sent those out to every active voter, which was a
21 little over 7 million. And we made the decision in late March,
22 and I think by April 14th or 15th we were able to get all them
23 out the door, in large part because the large printers that
24 were there had a lot of cancellations from travel companies,
25 specifically Delta canceled all their print runs, so we were

1 able to do that with the variable data and get it out the door,
2 like I said, pretty quickly.

3 And for that we initially used HAVA money before the CARES
4 money had passed. That was the coronavirus funds from the
5 federal government. So then we switched those dollars out and
6 used the CARES money for the absentee ballot program.

7 Secondarily to that, historically counties had been the
8 fulfillment arm for doing absentee ballots. What we did was we
9 worked through Dominion, our vendor, to get a subcontractor
10 with Runbeck in Arizona who took the burden off the counties.

11 And we as a State decided the counties were burdened with
12 having to deal with personnel issues more than anything. And
13 the cost, it would have been way out of the normal range what
14 they would have had to do to fulfill those. So the State
15 decided to use those federal dollars and take that on to take
16 that burden off of the county.

17 And a secondary reason for us doing that is we had massive
18 concerns they wouldn't be able to fulfill. And if they did
19 fulfill, they would likely fulfill with many of the wrong
20 ballot styles, which could have potentially disenfranchised
21 voters in the primary from receiving the correct full ballot.

22 And there was a lot of quality assurance tools in Runbeck
23 that helped to assure that they got the correct ballot style.
24 Because in the June primary, because we had -- we suspended the
25 March presidential preference primary. But there had already

1 been around 280-some-odd thousand voters that had cast votes.

2 THE COURT: Let me just hold you there.

3 Going too fast for you?

4 COURT REPORTER: He is. And we have had a long talk
5 about it.

6 THE WITNESS: I thought I was going pretty good this
7 time. So ...

8 THE COURT: I thought it was more understandable, but
9 we are, unfortunately, at 4:30. And as fast as our wonderful
10 court reporter is, there is only so much she can do.

11 So just a little slower.

12 I'm going to hand you this note.

13 THE WITNESS: I'm efforting very -- as hard as I can,
14 Your Honor. But I will try harder.

15 **(There was a brief pause in the proceedings.)**

16 BY MR. BELINFANTE:

17 **Q.** I think I can ask and move it a little bit.

18 To your recollection, was there a state of emergency in
19 place during the summer of 2020?

20 **A.** Yes.

21 **Q.** And also for the record, you talked about HAVA money. Can
22 you just explain what that is?

23 **A.** HAVA money is federal dollars that are given to states to
24 spend for elections. It stands for the Help America Vote Act,
25 which was originally passed after the presidential election in

1 2000 to help modernize and professionalize elections across the
2 United States.

3 **Q.** All right. Do you recall there being any significance to
4 a voter's signature as it relates to absentee ballots in the
5 2020 primary and general election?

6 **A.** The signature is used, at that time, for two specific
7 purposes. A signature has to be present on the request form
8 and a signature has to be present on the returned absentee
9 ballot envelopes so that you can identify, make sure that that
10 individual voter is the one who requested that ballot
11 originally.

12 **Q.** Okay. After the November 2020 general election, did the
13 Secretary's office take any action to address expressed
14 concerns that voters had about the integrity of the election?

15 **A.** We attempted to be hyper transparent and communicative to
16 the point where we were doing sometimes two press conferences a
17 day. We also used the existing law that allowed us to do
18 audits, which we had already previously decided internally to
19 do a risk-limiting audit, and chose to do the hand re-tally of
20 the presidential race. Those were some of the big items that
21 we did.

22 We also contracted with Pro V&V to go and do selective
23 hash value tests in different counties on different equipment
24 to make sure that they had the correct hash value to show that
25 nothing had been tampered with on the software side.

1 I'm trying to think what else we -- we also -- in Cobb
2 County we did, in conjunction with the Georgia Bureau of
3 Investigation, a review of signature matching because there was
4 a claim from an elections temporary worker in Cobb County they
5 had been instructed not to use the signatures as
6 identification.

7 And in that, they reviewed 15,000-plus absentee ballot
8 signatures and they found that none were incorrect. They found
9 two that should have been cured. Because one of the changes
10 between the 2018 election and the 2020 election is a ballot
11 cure provision was put into the law that if there was an issue
12 in identifying the voter they were given a period of time to
13 cure those absentee ballots and prove they were who they said
14 they were.

15 MR. CROSS: Your Honor, just for the sake of
16 efficiency, we spent the entirety on the examination so far on
17 the November 2020 election. We are not contesting the outcome
18 of that election. So if we could get an understanding of the
19 relevance.

20 MR. BELINFANTE: Your Honor, the administration of
21 elections, the challenges to the election either on hand-marked
22 paper ballots or cyber -- or machine-based are relevant.

23 In addition to that, Mr. Sterling has already
24 testified given -- well, I mean, I can answer this with him in
25 the room. But the -- about problems or unique aspects of the

1 2020 election as it relates to absentee ballots given that we
2 have allegations that absentee ballots are cumbersome or
3 somehow burdensome.

4 He just talked about audits.

5 And I think all of this is relevant to the case.
6 If -- I fail to see how it is not relevant. It is what is the
7 State doing. It also speaks to what is going on in November,
8 December, January, et cetera, of 2020.

9 MR. CROSS: Your Honor, just briefly, if we weren't
10 approaching 5:00 today, I would say let him have at it, but --

11 MR. BELINFANTE: Then, Your Honor --

12 MR. CROSS: Hold on. Let me finish, Josh.

13 We spent a lot of the day on other things, and now
14 we're addressing an issue that is not in dispute. And it is
15 all four years ago. Right.

16 So the question before the Court is what are the
17 measures that are in place today that protect the future. And
18 he is talking about things they did to verify the 2020 outcome.
19 So just for efficiency, I think we can move beyond that.

20 THE COURT: Well, they are entitled to put on a
21 defense. I think this is a little more than what we need. But
22 if you really want to go down this path, maybe we should start
23 tomorrow then.

24 MR. BELINFANTE: I'm fine to do that, Your Honor.

25 MR. CROSS: Wait to do what?

1 THE COURT: Then maybe we should start tomorrow.

2 MR. CROSS: I would rather let him go and do what he
3 is going to do so we maximize the time. Because we have got to
4 close on Thursday. I don't think anybody thought we were going
5 to do a whole day on Ms. Marks.

6 THE COURT: How much more do you have here? I mean,
7 I know --

8 MR. BELINFANTE: I'm done with 2020 election in like
9 five more questions. I will have questions about 2022 --

10 THE COURT: Go ahead.

11 MR. BELINFANTE: -- you know, but yeah. I mean ...

12 THE COURT: Okay. Go ahead.

13 BY MR. BELINFANTE:

14 Q. Mr. Sterling, you said a moment ago that there were audits
15 conducted. And I believe your testimony was we used audits.

16 Who actually conducted the audits in November 2020?

17 A. The counties.

18 Q. Okay. Did the Secretary's office consult with anyone
19 about how to conduct the audits in 2020?

20 A. We did a contract with Verified Voting with Ben Adida.

21 Q. Okay. Does the Secretary's office maintain a relationship
22 with Verified Voting?

23 A. Yes, sir.

24 Q. Why?

25 A. Because we by law have to institute RLAs.

1 Q. Okay. Do State officials currently conduct audits of
2 elections?

3 A. State officials do not conduct the audit, no. But we
4 contract with Verified Voting to use the Arlo tool to allow the
5 counties to do that.

6 Q. Okay. Do you have an understanding of whether the
7 Secretary has the authority to order counties to conduct more
8 audits, sitting here today?

9 A. We cannot.

10 Q. Okay. I think you said Verified Voting was with
11 Mr. Adida. Did you mean something else?

12 A. Oh. VotingWorks. My fault. It is late in the day.
13 VotingWorks is his company. My fault.

14 Q. All right. Mr. Sterling, I am going to -- if you can, are
15 you familiar with the Secretary of State's office's decision in
16 Spalding County in 2021 in an issue involving servers?

17 A. Yes.

18 Q. Okay. What was done in Spalding County in 2021 regarding
19 servers?

20 A. The -- there was a concern brought to us by the county
21 that they believe a door had been left unlocked where the
22 election management system resided, their Express server.

23 THE COURT: Now, you're going fast and I'm having
24 trouble. Go ahead. Just --

25 THE WITNESS: Okay.

1 THE COURT: -- what happened in Spalding County?

2 THE WITNESS: There was a concern that was raised
3 that a door had been left unlocked where the EMS lived, where
4 the election management system resided.

5 Out of an abundance of caution, we exchanged that
6 server out and brought the other server back to the Center for
7 Elections in Cobb County.

8 BY MR. BELINFANTE:

9 Q. Okay. Are you familiar with the firm SullivanStrickler?

10 A. Yes, sir.

11 Q. Do you have any understanding of whether SullivanStrickler
12 had access to the Spalding County servers?

13 A. I have seen no evidence of that fact.

14 Q. Do you recall who was the chairman of the Spalding County
15 Board of Elections in 2021 when the Secretary acted as you just
16 described?

17 A. His last name was Johnson. Ben. Ben Johnson.

18 THE COURT: Ben.

19 BY MR. BELINFANTE:

20 Q. Do you know anything about Mr. Johnson?

21 A. Again, it is my understanding, from public statements and
22 social media, that he is a bit of an election denier and
23 QAnon -- I don't know -- supporter, but he is done -- he is a
24 QAnon type and a Stop the Steal type is my understanding.

25 Q. All right. Moving forward to the 2022 general election,

1 Mr. Sterling, as compared to the 2020 general election, did the
2 Secretary's office receive the same volume of challenges to the
3 integrity of the election in 2022?

4 **A.** No, sir.

5 **Q.** Did the State deploy any new equipment for the 2022
6 general election that was not present during the 2020 general
7 election?

8 **A.** We did a large scale pilot in about a third of the State
9 of the new cellular-based Poll Pads, which are the check-in
10 devices for the voting system.

11 **Q.** And are those Poll Pads in use today?

12 **A.** We have subsequent to that now purchased and changed out
13 all the Poll Pads to be the cellular-based Poll Pads, yes.

14 **Q.** Okay. And to the best of your knowledge, did the General
15 Assembly change laws governing absentee ballots that went into
16 effect at least by the 2022 election?

17 **A.** Yes, sir. And the Election Integrity Act, there were
18 several changes made around them. One of the largest being, as
19 far as we were concerned, on the training side because we were
20 using the driver's license number as the verifier of identity
21 on those. And also on the absentee ballot portal, which is the
22 online way you can request an absentee ballot, use a driver's
23 license number as well.

24 And in that they required, essentially, a wet signature to
25 be scanned and sent in. So -- and you can use the last four of

1 the Social for the return or the driver's license number. But
2 in order to do the request, it had to be the driver's license
3 number. And that is the way the law sits today.

4 **Q.** Okay. What is the significance, if any, of the signature
5 of a voter as it relates to absentee ballots today and going
6 forward in Georgia elections?

7 **A.** It is less significant because it is not used as the
8 identifier. You still have to sign the oath the same way you
9 sign the oath when you vote in person.

10 **Q.** All right. Let's -- if I -- what does the phrase election
11 security mean to you?

12 **A.** It is kind of a broad -- it is a series of different
13 various things depending on the context in which you are asking
14 the question.

15 **Q.** What are some aspects that go into election security?

16 MR. CROSS: Your Honor, as long as he's not offering
17 this as an expert, I don't have an objection.

18 MR. BELINFANTE: Your Honor, it is not as an expert.
19 It is as an administrator.

20 THE WITNESS: In election administration --

21 THE COURT: I'm sorry. I just need to stop for one
22 moment.

23 **(There was a brief pause in the proceedings.)**

24 THE COURT: I'm sorry.

25 MR. BELINFANTE: That's okay.

1 BY MR. BELINFANTE:

2 **Q.** Mr. Sterling, what are some of the factors or aspects that
3 go into what you consider to be election security?

4 **A.** Physical security. Chain of custody of the equipment and
5 ballots and ballot paper. The transport of paper from the
6 manufacturer to the counties. Inspections of facilities that
7 hold them. Cybersecurity. Training around cybersecurity.
8 Cyber hygiene.

9 Trying to make sure that -- I mean, it is -- because it is
10 different aspects to the voting systems altogether. There's
11 security around the voter registration system, around the
12 machines, around, you know, access to the EMS, which is
13 governed by law and rule.

14 I mean, it is a very -- it is a lot of different things
15 that when you take them altogether it is processes and
16 procedures. It is training. And there is a terminology used
17 called defense in depth where you take all these processes and
18 procedures and all the steps you take together with the
19 personnel and training -- it's kind of soup to nuts, everything
20 feeds into the security of some level. Cybersecurity is
21 obviously part of it. But it is a lot of different things.

22 **Q.** All right. Between the 2020 general election and the 2022
23 general election, did the Secretary's office do anything to
24 enhance election security as you defined it?

25 **A.** We have --

1 MR. CROSS: Objection, Your Honor. I don't believe
2 this has been disclosed in discovery. We covered this earlier.

3 MR. BELINFANTE: Your Honor, I think the question is
4 what was arguably not disclosed in discovery, which we again
5 don't agree with, was specific responses to the CISA or
6 Dr. Halderman report. He has just now defined election
7 security far more broadly than that.

8 MR. CROSS: Well, this is the first time we have
9 heard Mr. Sterling define election security at all. He is not
10 offering it as an expert. So I'm not sure what the relevance
11 is. But if they are going to have him talk about specific
12 mitigation measures, that was required to be disclosed either
13 in response to our discovery requests or under Rule 26.

14 It has never been a secret they were going to rely on
15 him as a witness and Rule 26 is clear. They have to identify
16 the witness, the topics, and they have to provide any discovery
17 that goes along with that.

18 We have never seen this.

19 MR. BELINFANTE: Your Honor, they have taken two
20 30(b)(6) depositions of Mr. Sterling. To say that they have
21 not had access to information is simply irreconcilable with the
22 record, number one.

23 Number two, there have been over -- I can't imagine
24 how many documents produced in this case. It is wrong to say
25 that they have no idea what the State has been doing. Half the

1 notebooks we have, Your Honor, are filled with articles, SEB
2 meetings, and other things, all of which the plaintiffs have
3 had notice of.

4 To say that a witness cannot testify about any
5 actions taken on election security, which he has denied
6 broadly, and not just what Dr. Halderman reported in Michigan,
7 which was the dispute earlier, is simply wrong.

8 MR. CROSS: That is not our position. I asked this
9 witness in October of 2022 -- we can pull it up -- what steps
10 they had taken to implement the CISA advisory. He is bound by
11 that testimony.

12 If Mr. Belinfante wants to have him reiterate that
13 testimony, that's fine. I have no objection to that.

14 THE COURT: Well, as I understand what you are
15 stating, Mr. Cross, is you are saying that the witness did
16 not -- had nothing to respond or offered nothing in response
17 concrete to your request as to what they did in light of CISA's
18 recommendations in the report.

19 As I understand what Mr. Belinfante is saying is I'm
20 asking him about other security matters broadly defined in a
21 range of ways that are not necessarily cybersecurity.

22 MR. CROSS: Okay. Then I guess --

23 THE COURT: Did I --

24 MR. BELINFANTE: That's right, Your Honor. Yeah.
25 I -- candidly, I think we've addressed the CISA issues, and I

1 was not seeking to have that -- that is why I asked him to
2 define election security to begin with.

3 And so because he defined it as a ton of different
4 things, that was the purpose of the question is to find out
5 just generally. I don't expect the witness to go into
6 literally everything, but --

7 MR. CROSS: And the confusion came from he included
8 cybersecurity and cyber hygiene. So if he's not going to get
9 into any steps on cybersecurity, cyber hygiene, Halderman,
10 CISA, then we can see where it goes.

11 MR. BELINFANTE: With that, if that -- because I took
12 the objection to be more broad. I can rephrase the question
13 and perhaps --

14 THE COURT: All right. Thank you.

15 MR. BELINFANTE: -- assist with that.

16 BY MR. BELINFANTE:

17 **Q.** Other than cybersecurity as articulated by Dr. Halderman
18 and reflected in a CISA recommendation, did the Secretary's
19 office take steps between the 2020 general election and the
20 2022 general election to address election security concerns?

21 And I don't need all of them, Mr. Sterling.

22 **A.** Okay.

23 MR. CROSS: Cybersecurity in general, is that where
24 we are?

25 MR. BELINFANTE: Excluding the Halderman/CISA

1 mitigation efforts as identified.

2 THE WITNESS: We partnered with the Department of
3 Homeland Security to do physical inspections on every county as
4 to where the equipment is held and look at those.

5 THE COURT: Can you speak up a little bit more?
6 Thank you.

7 THE WITNESS: I'm trying to speak -- when I speak up,
8 I go faster. So I'm trying to gauge myself on how to do that.

9 One of the largest things that we did was we felt
10 that the voter registration system was a -- something that had
11 to be addressed for two reasons. One, it was old -- aging, and
12 aging systems tend to have more problems -- if I can say the
13 word cybersecurity, from a cybersecurity side and from a
14 functioning side.

15 And with the passage of SB 202, there were specific
16 things called for in that law that could not be done in the
17 former election night voter registration system.

18 So we started with a vendor and chose a platform in
19 2021 and built out a whole new system. Inside of that system
20 we made changes to how people could access it.

21 In the old system they had to have -- they had
22 multiple people under the same emails with the same passwords.
23 Now we've individualized it. And even one other addition we
24 did to that -- as of Sunday night, you might have seen in the
25 news, Fulton County had a ransomware attack. When we heard

1 there was a possibility of it, we were able to turn on a tool
2 there that basically shuts down all of their county users so
3 they can't access our system while they mitigate and figure out
4 what is going on with that.

5 I was supposed to be on a call today -- but obviously
6 I was here -- to hear about what where we stood on that.

7 That's a rather large one.

8 We have done more training on this. We also -- our
9 investigators, when they go down, they kind of make sure that
10 the log is being kept for people to go into the EMS contained
11 locked area. It is -- again, it is something we talk about and
12 stress all the time.

13 So that's -- in the broadest sense, we do physical.
14 We have done cyber. We have done training. We have made other
15 changes that I'm told I now can't talk about. So -- but those
16 are broad questions of security.

17 We emphasize it all the time with the counties.
18 Because the counties, at the end of the day, have all this
19 equipment and they have the bodies who are dealing with the
20 equipment and the voter. They interact with all these systems.
21 So helping to train them up. And we've gotten them a baseline
22 of training as well that we pay for at the state level for
23 cybersecurity and cyber hygiene as well.

24 BY MR. BELINFANTE:

25 Q. Mr. Sterling, in fairness, I think my question was about

1 between the general election of 2020 and the general election
2 of 2022.

3 Did I understand you to go beyond the 2022 election in
4 terms of the Secretary's efforts?

5 **A.** The only additional thing we did -- that stuff was all in
6 between.

7 **Q.** Okay.

8 **A.** We have done DHS in between then and since then as well.
9 The Department of Homeland Security inspections.

10 **Q.** Okay. All right. Do you recall being asked by Mr. Cross
11 on cross-examination a week or so ago whether, quote, the
12 vulnerabilities that Dr. Halderman identified in his July 2021
13 report should be mitigated?

14 **A.** Yes.

15 **Q.** If I told you that it has been said the State did not
16 attempt any mitigation efforts, would you agree with that
17 statement?

18 **A.** Of course not.

19 **Q.** Do you recall Mr. Cross asking you about phone calls you
20 had with Dominion about Dr. Halderman's findings or the CISA
21 advisory?

22 **A.** Yes.

23 **Q.** Why would you call Dominion about cybersecurity issues?

24 **A.** In large part because it was their system and they are our
25 contractor. And the contract would obviously put

1 responsibilities on them to a degree to help us mitigate
2 anything that might be a vulnerability or handle it through one
3 way, shape, or form.

4 **Q.** Does the Secretary's office deem itself bound by what
5 Dominion suggests?

6 **A.** No.

7 **Q.** Do you recall Mr. Cross asking you about an August 2021
8 Sandy Springs Perimeter Chamber of Commerce event?

9 **A.** Yes.

10 **Q.** Do you recall being asked a question about election
11 security at that event?

12 **A.** Yes.

13 **Q.** Do you recall who asked you the question?

14 **A.** My state representative, Shea Roberts.

15 **Q.** To your knowledge, does your state representative
16 represent clients against the State?

17 **A.** That is my understanding.

18 **Q.** Okay. And do you recall Mr. Cross asking you whether your
19 stated reaction at that meeting was to say that Dr. Halderman's
20 report was, quote, a load of crap?

21 **A.** That's correct.

22 **Q.** Okay. And to be fair, in August of 2021, had you read
23 Dr. Halderman's report?

24 **A.** No, sir.

25 **Q.** Okay. Let me ask you a question that Mr. Cross did not

1 then. Why did you say that at the Perimeter Chamber of
2 Commerce meeting?

3 Excuse me, Sandy Springs --

4 **A.** Sandy Springs.

5 The -- I think technically it is Sandy Springs Perimeter
6 Chamber and now it is just Perimeter Chamber. There is some
7 fight about the name.

8 I had been in election administration, at that point, for
9 several years. And obviously Dr. Halderman was a known entity
10 within that world. And from my understanding of having
11 multiple conversations with people, he had told Secretary
12 Clinton to contest the 2016 election because of the potential
13 hacking of Russians, of machines.

14 He is viewed, from my understanding -- no election
15 administration people that I know would consider him to be
16 somebody reliable to work with on these kind of issues.

17 MR. CROSS: Objection, Your Honor.

18 MR. BROWN: He's --

19 MR. CROSS: Character assault. It is all hearsay.

20 MR. BROWN: It is all hearsay, multiple hearsay. He
21 is saying other people have told him, and so he is saying that
22 for the truth of what the other people have told him. It is
23 completely hearsay.

24 MR. BELINFANTE: Your Honor, he's --

25 MR. CROSS: Mr. Belinfante knows Juan Gilbert's

1 testimony is in the record that Dr. Halderman is the leading
2 expert on this and whom he would turn to for a cybersecurity
3 assessment.

4 MR. BELINFANTE: For hacking.

5 MR. CROSS: Which is what his report is about.

6 MR. BELINFANTE: Mr. Sterling is testifying. Let me
7 try to answer the objections.

8 THE COURT: I think that he can answer this
9 without -- I mean, he can speak to his feelings about him from
10 2016. But I think that, frankly, to have on the record
11 anything that would be quite as -- if you want to say this and
12 we want to put it under seal, I would consider that.

13 But mostly, I mean, there is nothing that's factually
14 based. You can say -- and you can suggest something to me.
15 But I don't think -- I don't think that that fairly says why --
16 even explains his comment. I mean, it may be his gut feeling.

17 MR. BELINFANTE: Your Honor, if I may, the plaintiffs
18 have made a lot of arguments about Mr. Sterling's statement.
19 It was in their opening argument. They never asked him to
20 explain why he did it. If they are going to use that, he is
21 entitled to explain why he did it. He is not testifying about
22 what other people told him for the truth of the matter
23 asserted. It is to explain his conduct.

24 THE COURT: Well, I'm going to let him explain his
25 conduct. But is it really right to -- go ahead, Counsel.

1 MR. CROSS: I was just going to say, Your Honor,
2 he -- first of all, what Mr. Belinfante is saying is not
3 accurate. He has been asked to explain that, including in a
4 deposition. And I think that testimony may already be in.

5 But more importantly, I don't have any problem if the
6 witness wants to say people provided information to me that led
7 me to reach that conclusion. What he can't do is go the next
8 step and say what all that hearsay and stuff is. That is where
9 he is trying to go.

10 But if -- no problem if he just says I relied on
11 something somebody told me and that is where I landed because I
12 hadn't read the report.

13 THE COURT: Well, that is a little bland, but --

14 MR. CROSS: That is the nicest thing anyone has ever
15 said to me.

16 MR. BELINFANTE: I think the witness has given his
17 answer. I'll try to move it along.

18 BY MR. BELINFANTE:

19 Q. Mr. Sterling --

20 MR. CROSS: We're moving to strike that answer, to be
21 clear.

22 MR. BELINFANTE: Oh, well, then, yeah, we would
23 object to that for all the reasons I have said.

24 MR. CROSS: I don't have a problem if he asked the
25 question again and we get an answer that doesn't get into

1 hearsay.

2 MR. BELINFANTE: He's entitled to express the basis
3 of his opinion. The hearsay would be if it is for the truth of
4 the matter asserted, which we're not using it for. It is to
5 explain conduct that has been made an issue in this case.

6 MR. CROSS: We'll defer to Your Honor as to what
7 weight you give it.

8 THE COURT: What?

9 MR. CROSS: We will defer to Your Honor on what
10 weight, if any, you give it so we can move on.

11 THE COURT: Well, I have a problem. If he doesn't
12 have any personal knowledge of what he said about the 2016
13 election, I think that that is an improper statement in terms
14 of -- he has no personal knowledge of it, then it is -- but it
15 is what it is.

16 I don't know what -- it is really not even -- what he
17 may have told Secretary Clinton is not relevant here. So I'm
18 going to strike that sentence from the record.

19 You know, from his perspective, he can say that
20 people have told him from the people he knows that he is not
21 reliable. That is -- I mean, it is not substantive evidence in
22 the sense it is obviously beyond hearsay. We don't know who he
23 is talking to. But if you want to offer that as an
24 explanation, that is yours. But it is hearsay.

25 MR. BELINFANTE: Okay.

1 BY MR. BELINFANTE:

2 Q. Mr. Sterling, when deciding --

3 THE COURT: So I will not consider it for the truth
4 of anything.

5 MR. BELINFANTE: Yeah. We're not asking the Court
6 to. Yeah. Sure.

7 THE COURT: And we'll strike the sentence I have
8 identified.

9 MR. BELINFANTE: Fine.

10 BY MR. BELINFANTE:

11 Q. Mr. Sterling, when considering questions of election
12 policy, does the Secretary's office limit its review and
13 analysis to cybersecurity?

14 A. Of course not.

15 Q. Okay. Does the Secretary's office consider
16 Dr. Halderman's work to be limited to cybersecurity?

17 A. Yes. And only cybersecurity.

18 Q. What other factors does the Secretary's office have to
19 consider when deciding questions of election policy?

20 A. The main ones being the law we have to follow, both
21 federal and state. Feasibility. Trainability. Usability by
22 the voters. Usability by the county elections officials.
23 Repeatability. Ease of use.

24 Because you can create the most secure system on the
25 planet that nobody can vote on or we can have the most open

1 system in the world that is completely insecure. You have to
2 balance between those things.

3 And cybersecurity is this narrow scope right here and we
4 have to deal with voters, elections, building ballots. How do
5 you -- how do all these things interplay. Cost.

6 Like I said, repeatability and training are giant things
7 we have to take into account because we have, in the State of
8 Georgia, counties the size of Fulton that are highly resourced
9 but have lots of management issues down to Taliaferro County
10 which has I think a half-time employee. And we have to set up
11 rules with the State Election Board and training that all of
12 them can use.

13 So it is -- a lot of different factors feed into --
14 cybersecurity being obviously part of it. But it is not the
15 only and controlling thing that exists.

16 **Q.** And how many full-time employees are in the Secretary's
17 Election Division?

18 **A.** I think currently we are funded for 23. I could be off by
19 one or two either way.

20 **Q.** Okay. Moving on, are you familiar, Mr. Sterling, with the
21 Bipartisan Policy Center?

22 **A.** Yes.

23 **Q.** And what is that?

24 **A.** It is a -- it is sort of a think tank organization based
25 out of DC. That is what it says it is. It is a bipartisan

1 group that looks at policies overall in various different
2 things. It was founded by two sets of Senate majority
3 leaders -- let me see, Bob Dole, Howard Baker, Tom Daschle and
4 George Mitchell -- in the mid 2000s.

5 **Q.** Has it reviewed Georgia elections?

6 **A.** One of the sections they have focus on is elections in
7 general, and they have looked at the laws and election
8 administration of all 50 states and the District of Columbia,
9 yes.

10 **Q.** Okay. Did that review cause you any concern?

11 **A.** No.

12 **Q.** Why?

13 **A.** Because they ranked us as tied with Colorado for
14 number one in the country for election administration.

15 **Q.** Mr. Sterling, I'm going to ask you to now address some of
16 the competing ideas of remedial policy measures in -- at issue
17 in this case. I'm going start with some questions about the
18 BMDs.

19 Do you have a general understanding of the
20 State's contract with Dominion?

21 **A.** Yes, sir.

22 **Q.** Presume, for argument's sake, that plaintiffs asked the
23 Court to enjoin the State's use of proposed election system,
24 which is defined as in precinct scanner/tabulators for 2D
25 barcodes generated by BMDs pursuant to the State's contract

1 with Dominion.

2 Presume they asked the Court to enjoin the State's use of
3 proposed election system as I just defined it for future
4 elections.

5 What would --

6 MR. CROSS: Are you asking him to presume this?

7 MR. BELINFANTE: Yes.

8 MR. CROSS: This is a hypothetical?

9 MR. BELINFANTE: Well, it is based on y'all's third
10 amended complaint Paragraph 132 and 71. That is where the
11 language came from.

12 MR. CROSS: Okay.

13 BY MR. BELINFANTE:

14 Q. But yes, I'm asking you to presume that that is what has
15 been asked.

16 What would happen in terms of election administration in
17 Georgia if the Court prevented the State from using the in
18 precinct scanners/tabulators for 2D barcodes generated by BMDs?

19 MR. CROSS: Calls for speculation.

20 THE WITNESS: As I understand your reading of it --
21 oh, sorry.

22 MR. CROSS: Did you say scanners?

23 MR. BELINFANTE: I said in precinct
24 scanners/tabulators for 2D barcodes generated by BMDs.

25 MR. CROSS: I would also argue it's irrelevant.

1 We're not seeking that relief.

2 MR. BELINFANTE: That is in the Curling third amended
3 complaint Paragraphs 132 and 71.

4 MR. CROSS: We have been clear in trial we are not
5 seeking to enjoin the use of scanners.

6 MR. BROWN: Your Honor, the pleadings are overtaken
7 by the pretrial order.

8 MR. BELINFANTE: Over what? I'm sorry.

9 MR. BROWN: By the pretrial order, as a matter of
10 law.

11 MR. BELINFANTE: All right. Well, we won't -- I'll
12 move on from what the plaintiffs asked for.

13 THE COURT: They have been pretty clear about this in
14 here. I mean, maybe to my surprise at times. But they have
15 been clear that they have not been seeking this particular form
16 of relief.

17 MR. BELINFANTE: All right.

18 BY MR. BELINFANTE:

19 Q. What would -- do you have an understanding of whether
20 Georgia law requires BMD usage for in-person voting whether
21 advanced voting or an election day?

22 A. Current law requires it for both purposes.

23 Q. Okay. And if the Court were to prevent the State from
24 enforcing that requirement, how would that impact election
25 administration in Georgia?

1 **A.** In the upcoming election?

2 **Q.** In November 2024. Yes. Forget the primary,
3 November 2024.

4 MR. CROSS: Objection. Speculation, Your Honor.

5 MR. BELINFANTE: Your Honor, he has certainly
6 demonstrated his familiarity with the Dominion equipment, with
7 administering elections in Georgia. I think he can say what
8 would happen in this case.

9 Now, if the plaintiffs want to stipulate that there
10 is no way to determine what their now proposed relief is, then
11 I think we can shorten the hearing pretty quickly.

12 MR. BROWN: I don't understand that statement.

13 MR. CROSS: I'm just preserving an objection. Your
14 Honor can take it for what it is worth.

15 THE COURT: Mr. Brown, did you have anything more?

16 MR. BROWN: We do not object to the question, Your
17 Honor.

18 THE COURT: All right.

19 Go ahead.

20 BY MR. BELINFANTE:

21 **Q.** Do you need me to repeat the question?

22 **A.** Yes, sir.

23 **Q.** Okay. If the Court were to prevent the State from
24 enforcing that uniformity requirement, use of BMDs on advanced
25 election day -- or advanced voting and election day voting, how

1 would that impact election administration in the State for the
2 November 2024 election?

3 **A.** If I'm going to be frank about it, I think it would be
4 impossible not -- it would be very, very difficult. It would
5 cause a slew of issues. And I about guarantee people would get
6 the wrong ballots and there would be disenfranchisement.

7 We haven't had a chance to train or set rules on how to
8 deal with hand-marked paper. And it would be a huge burden on
9 the counties who have not budgeted for anything along those
10 fronts. It would be -- my mind, it would be nightmarish.

11 **Q.** Does the State have an interest in using the current
12 Dominion BMD equipment?

13 **A.** Yes.

14 **Q.** What is that interest?

15 **A.** Again, the uniformity brings a lot of advantages, for
16 training and for usage, I mean -- and, frankly, to protect
17 voters. And the early voting environment especially, but also
18 in the election day environment, you are assured, especially
19 now with the introduction of our cellular-based Poll Pads, that
20 every voter who is voting in person is getting the exact right
21 ballot style.

22 If we move away from that, there is no guarantee and there
23 is no way of actually knowing if an individual voter got the
24 correct ballot or not. With the current -- with the new
25 cellular-based Poll Pads we can do that.

1 THE COURT: With the new --

2 THE WITNESS: Cellular-based Poll Pads.

3 We're the first state in the United States. We now
4 can have a guarantee of that by -- we can look at the log
5 files.

6 The only thing to get in the way of that is if an
7 individual at the county level didn't district a voter
8 properly. And obviously human beings are the biggest fail
9 points in every election ever because we are the most flawed
10 part of the systems.

11 Secondly, the cost aspect for the counties. Under
12 the current system, 95 percent or so of voting is done on the
13 eight and a half by eleven BMD ballots that we in the State
14 contract locked in at a cost of 13 cents per ballot for
15 counties. If we go away from that, it is an unknowable cost.

16 It is just -- it would be highly difficult to do. We
17 don't have rules. We don't have time to do training on any of
18 this because we are in elections literally as we speak.

19 The UOCAVA overseas ballots went out last weekend.
20 We are in this period of time through March. The qualifying
21 for the next election is the first week of March. We will
22 begin building ballots literally that week. Some structural
23 things are already being done on that front.

24 MR. BROWN: Your Honor, if I may interrupt. It is
25 not responsive. The question was for the 2024 -- I thought it

1 was for the '24 November election. Maybe I'm mistaken. He's
2 talking about the current UOCAVA --

3 THE COURT: All right.

4 MR. BROWN: -- ballots that are not for the 2024
5 presidential election.

6 THE WITNESS: My point in that is that we are in the
7 election season now. November of 2024 does not stand by
8 itself.

9 MR. BROWN: I understand.

10 THE WITNESS: It is human beings who do that --

11 MR. BROWN: Your Honor, I object to relevance. We
12 are not seeking an injunction for March.

13 THE COURT: Your request is for an injunction
14 relative to the conduct in the November election.

15 MR. BROWN: I'm not sure it is limited to just
16 November, but he's --

17 THE COURT: Well, November or thereafter.

18 MR. BROWN: No. November and it might be prior to
19 that, but it is not right -- the one going on right now.

20 And it wasn't responsive to the question. The
21 question was what would be the impact to the State if you have
22 to change for November 2024. And he is answering an entirely
23 different question, which may also be objectionable, but it
24 wasn't even asked.

25

1 BY MR. BELINFANTE:

2 **Q.** Mr. Sterling, does the UOCAVA ballots, as you just
3 described, impact -- have a relevancy for the November 2024
4 general election?

5 **A.** If I had been allowed to finish my answer on this, we are
6 in an election now. The individual human beings who run the
7 elections of the counties are essentially in the election
8 environment all the way through now through December, if there
9 is a runoff in any of these elections of 2024.

10 There is no set time or place where we can work on
11 training, changing rules, doing all that stuff. There is
12 simply not time allowed to do it. And if you tried it without
13 doing all those things, it would be massive failure in November
14 of 2024. And that is why it is a relevant answer to that
15 question.

16 And it shows, again, a lack of understanding of how
17 elections have to be built on top of one another.

18 **Q.** Slow down. Slow down.

19 Mr. Sterling, if a county -- if the Court -- the State
20 were not able to enforce the uniformity requirement and a
21 county wanted to not use the BMD system, who would pay for the
22 shift, so to speak, to whatever else they would use?

23 **A.** The counties.

24 MR. BROWN: Object. Assumes there would be
25 additional costs.

1 THE WITNESS: There would absolutely be additional
2 costs.

3 THE COURT: I'm going to allow him to answer.

4 BY MR. BELINFANTE:

5 Q. Would there be additional costs?

6 A. Yes.

7 Q. Okay. And what would those additional costs be?

8 A. Paper, paper management, potentially more mobile ballot
9 printers. I think it would likely require more personnel,
10 especially on early voting, which is one of the most expensive
11 lifts we have.

12 To claim there aren't any extra costs is, again, a total
13 misunderstanding of how election administration is done.

14 Q. And who would bear the brunt of those costs? The State or
15 the counties?

16 A. The counties would singularly bear that cost.

17 Q. All right. If the Court were to order in the
18 November 2024 election that it would have to proceed allowing
19 the use of the BMDs but without the use of the QR code, is that
20 something that could be done by November of 2024?

21 A. That is not possible to be done for some of the exact same
22 reasons I listed out before. You could only change the
23 software if you are not in an election environment. Because
24 5.17 and 5.5 are not compatible. So you can't build ballots on
25 one and use it on the other.

1 And you have to move entire counties at a time to do that.
2 You can't have -- you could -- but it would be a nightmare --
3 run part 5.5 part 5.17, which is when we have looked at 5.17,
4 we said the earliest we could potentially do it, if we received
5 the funding, is to begin, at the earliest, December '24, likely
6 in January of '25.

7 In large part, too, because we did a pilot --

8 MR. CROSS: Your Honor, I'm sorry to interject. But
9 now, again the issue of the QR code was specifically raised by
10 Dr. Halderman as well as CISA. We're now getting a response on
11 why they couldn't mitigate the QR code, including software
12 5.17, there has never been discovery on.

13 MR. BELINFANTE: Your Honor, the question came from
14 the Court's summary judgment order. I'm not recalling from
15 CISA seeing something about the QR code being removed from the
16 ballot. I am happy to stand corrected. But I remember walking
17 through those efforts, and I just -- I don't recall what
18 Mr. Cross is talking about.

19 MR. CROSS: There's two different CISA advisories.
20 Just put that aside. One addresses the QR codes.
21 Dr. Halderman clearly addresses the QR codes. And we have a
22 discovery request that goes specifically --

23 THE COURT: You have a discovery --

24 MR. CROSS: We have an interrogatory we have
25 addressed before. I think it is the second set of

1 interrogatories from 2021. And we just heard that they were
2 not going to get into mitigations of what Dr. Halderman
3 identified.

4 The QR code is one of the biggest focuses of his
5 report. And this is the first we've heard on anything on this.

6 MR. BELINFANTE: Your Honor, this is not a mitigation
7 issue. This is a question of -- because the mitigation
8 presumes that there is a vulnerability that needs to be
9 addressed.

10 This is an election administration question that goes
11 to what the Court said would be something it could potentially
12 order. It has nothing to do with Dr. Halderman.

13 MR. CROSS: Why else would the Court order that? The
14 only reason the Court would order that is because you are
15 convinced that we have met our burden that there is a
16 vulnerability on the QR code that rises to a constitutional
17 violation.

18 MR. BELINFANTE: Your Honor, we --

19 THE COURT: I'm going to tell you this, I think we
20 have to at this point because I cannot -- we have really been
21 going at it. And I have given you my best. But I -- we're
22 going in circles at this point. And I don't think I can be as
23 helpful to you or in -- so I think we just -- I will take
24 this -- you know, you can explain it more in -- without the
25 witness or everyone here. We can talk for a few minutes and

1 you can try to explain to me what you-all -- or you can do it
2 now.

3 But I don't think -- you are welcome to finish the
4 conversation and I'll think about it. And that probably -- why
5 don't you go ahead and finish the argument. Then I'll rule on
6 it, and I'll think about it overnight and go back and look at
7 what --

8 MR. BELINFANTE: Your Honor, the only couple of
9 things I would add: The interrogatory that Mr. Cross is
10 discussing, we objected to. It was not -- as I understand it,
11 it was not disputed. And I don't think that Mr. Sterling, or
12 more importantly the State of Georgia, can be so hamstrung in a
13 question about future prospective injunctive relief that it
14 can't even hear what the election administration consequences
15 are.

16 It is not responding to cybersecurity issues or
17 Dr. Halderman. It is responding to what the Court said it
18 could do.

19 MR. CROSS: I completely agree with what
20 Mr. Belinfante said that they should not be hamstrung. They
21 should be able to put on whatever evidence they want as long as
22 they comply with the discovery rules. And we will talk this
23 through with Your Honor in the morning.

24 The last thing I will say is, it is not accurate that
25 they only objected. They provided a very specific written

1 response which they chose not to supplement.

2 That is the end of it. I'm happy to talk more --

3 THE COURT: This is the one we were talking about
4 before?

5 MR. CROSS: Correct.

6 THE COURT: You are saying they didn't supplement as
7 to any -- and would you just -- because I looked at it a lot
8 before, but I don't have it because we have moved a lot since
9 then.

10 MR. CROSS: Right. We can provide it.

11 THE COURT: And you were asking for basically any
12 updated information in his letter to you.

13 MR. BELINFANTE: Right. Which by its nature is not
14 the question I asked. The question is if that happened how
15 would it impact election security or how would it impact
16 election administration.

17 If I had asked him have you done anything to address
18 Dr. Halderman or the CISA report, that would be different.
19 This is --

20 THE COURT: All right. So your question is simply
21 then -- state it again for me just so I understand.

22 MR. BELINFANTE: If the Court -- and I want to be
23 precise because I pulled the language from the summary judgment
24 order.

25 If the Court were to order providing for the use of

1 printed ballots for vote counting without the use of QR codes,
2 how would that impact election administration in the
3 November 2024 election?

4 And just to preview, I was going to ask on a going
5 forward basis, you know, more detailed questions about cost and
6 things like that. So I want to be transparent with everybody
7 so we don't ask another question and end up in the same place
8 tomorrow morning.

9 MR. CROSS: And that is helpful. I think where we
10 may have missed each other is that was the question that was
11 asked. The answer went into software about 5.17 versus 5.5.

12 5.17 I understand from what we read publicly is
13 designed in some way to address things like the QR code and
14 maybe some other things. So that would be directly responsive
15 to Dr. Halderman and those vulnerabilities.

16 As long as we're not getting into that, I don't have
17 any problem with him guessing about what the world looks like
18 without QR codes.

19 MR. BELINFANTE: And I think, Your Honor -- not to
20 belabor the point. But I think there is -- we have had this
21 discussion. But I don't think it would be good to have the
22 conversation in front of the witness in terms of the
23 significance of 5.17. So we can either pick it up tomorrow --
24 but I do think it is similar to what -- without getting into
25 the substance of the testimony, we have been down this road

1 with Mr. Evans.

2 MR. CROSS: If we talk just today, we may figure this
3 out, because it sounds like you --

4 THE COURT: Maybe you can talk some more and simplify
5 it some.

6 MR. CROSS: Yeah. We may work this out.

7 THE COURT: I'm very sorry to have to ask you to come
8 back tomorrow.

9 MR. CROSS: I think that was happening, no matter
10 what, Judge.

11 THE WITNESS: I fully anticipated it, so I'm happy to
12 be here tomorrow.

13 THE COURT: You fully anticipated. You say I have
14 been with this crowd before.

15 All right. Can I excuse the witness?

16 Do you have anything else you wanted to wrap up that
17 was easy compared to this?

18 MR. BELINFANTE: No, Your Honor.

19 THE COURT: How much more do you have with this
20 witness?

21 MR. BELINFANTE: In terms of pages, three.

22 MR. CROSS: Very small print. I can see it.

23 MR. BELINFANTE: Yeah. It is not secure. It is a
24 paper ballot, that's why.

25 Honestly, I think the rest of it, because I don't

1 have -- as I have explained to plaintiffs' counsel, I have one
2 document I'm going to use with the witness. So I don't think
3 he is going to be on terribly much longer.

4 THE COURT: Okay. All right. Well, I'm going to
5 excuse the witness. If counsel wish to talk with me, let me
6 know now so I can stick around for a little while.

7 THE WITNESS: Do I leave now?

8 MR. BELINFANTE: You may leave now.

9 THE WITNESS: You tell me to leave.

10 THE COURT: Yes, you can leave.

11 MR. KNAPP: That was the shortest testimony ever.

12 THE WITNESS: It is interrupted. It keeps on going.

13 **(The witness exited the courtroom.)**

14 THE COURT: Was there anything else?

15 MR. BELINFANTE: Not for the State, Your Honor.

16 MR. CROSS: Nothing pressing today. We can let you
17 go.

18 THE COURT: All right. I mean, we have some work to
19 do still ourselves. So I just didn't want to start too much
20 later.

21 Okay. I'll see you at 9:30 then.

22 MR. CROSS: Thank you, Your Honor.

23 THE COURT: Thank you.

24 **(The proceedings were thereby adjourned at 5:24**
25 **PM.)**

C E R T I F I C A T E

UNITED STATES OF AMERICA

NORTHERN DISTRICT OF GEORGIA

I, SHANNON R. WELCH, RMR, CRR, Official Court Reporter of the United States District Court, for the Northern District of Georgia, Atlanta Division, do hereby certify that the foregoing 257 pages constitute a true transcript of proceedings had before the said Court, held in the City of Atlanta, Georgia, in the matter therein stated.

In testimony whereof, I hereunto set my hand on this, the 30th day of January, 2024.

Shannon R. Welch

SHANNON R. WELCH, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
OFFICIAL CERTIFIED TRANSCRIPT

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